



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mee Hoi Brothers Co. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing.

At the hearing, the tenant advised that he had submitted evidence some 4 days before the hearing. This evidence was received by the landlord but although it was received at the Burnaby location of the Residential Tenancy Branch, it was not in the physical file at the time the hearing commenced. The tenant described the evidence and I determined that it was not an adequate defence to the landlord's claim as the evidence did not prove that the tenant did not owe money or that he attempted to pay rental arrears within 5 days of having been served with the notice to end tenancy at issue. The hearing proceeded without my having received or considered the tenant's evidence as by the tenant's own description, it was irrelevant to the claim before me.

Issue to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that rent was set at \$960.00 per month and that on July 3, 2014, the tenant paid the landlord with a cheque for \$960.00. The cheque clearly states that the amount payable is \$960.00, but the bank misread the cheque and paid the landlord just \$460.00. In August, the landlord learned of the bank error and advised the tenant. The tenant did not pay the \$500.00 in arrears at that time, although he made a slight overpayment of his next installment of rent.

The landlord served the tenant with a 10 day notice to end tenancy for unpaid rent (the "First Notice") in July and applied for dispute resolution requesting an order of

possession and a monetary order through the direct request process, which is an *ex parte* desk order process (the "First Application"). The arbitrator who considered the First Application dismissed the application as the landlord had not submitted a copy of a notice of rent increase and had accepted rent after having served the notice which led the arbitrator to believe that the tenancy may have been reinstated. The First Application was dismissed with leave to reapply and the landlord was given the option of either proving that subsequent payments were not accepted for rent or serving a new notice to end tenancy if rental arrears were still owing.

On September 11, 2014, the landlord served the tenant with another notice to end tenancy for unpaid rent for the rental arrears which were still outstanding from July (the "Second Notice"). The amount listed on the Second Notice was \$457.00.

At the hearing, the tenant acknowledged that the landlord told him in August that he still owed \$500.00 in rent for July due to the bank error. The tenant testified that he received the decision resulting from the First Application and believed that it excused him from paying rent until the landlord could prove that the amount claimed was owing. The tenant acknowledged having received the Second Notice on September 11 and further acknowledged having received the landlord's evidence showing the rent ledger and he testified that he offered to pay the landlord the rental arrears on October 20. The landlord apparently refused to accept this offered payment unless the tenant agreed not to allow his girlfriend to bring his dog into the rental unit.

The tenant argued that (a) the First Application gave him the freedom to not pay any rental arrears until a new hearing took place; (b) the landlord claimed a different amount in the first application than he did in the second application which the tenant apparently believes invalidates the landlord's claim; and (c) the landlord's refusal to accept the offer of a rental payment 6 weeks after having served the Second Notice should prevent the landlord from obtaining an order of possession and monetary order.

Analysis

The decision resulting from the First Application very clearly gives the landlord the option of serving another notice to end tenancy and does not in any way relieve the tenant from paying the full amount of rent due each month of his tenancy. I find that the tenant was aware in August that he still owed the landlord \$500.00 and although he made a minimal overpayment presumably to address some of those rental arrears, he chose not to satisfy that debt.

The fact that the landlord claimed a different amount on the second application than in the First Application does not invalidate his claim. Rather, it simply reflects the

overpayment by the tenant in months subsequent to July as well as late payment fees and NSF fees which were applied to subsequent payments.

When the tenant offered to pay his rental arrears at the end of October, the landlord was not obligated to accept that payment or reinstate the tenancy. The landlord's indication that he may consider doing so if the tenant agreed to keep the dog out of the unit is not fatal to the landlord's claim and simply shows an attempt to negotiate.

I find that the tenant received the Second Notice on September 11 and had 5 days to either pay the rental arrears in full or file an application for dispute resolution to dispute the Second Notice. The tenant chose to do neither and pursuant to section 46 of the Act, is conclusively presumed to have accepted that the tenancy ended on the effective date of the Second Notice.

At the hearing, the landlord acknowledged having received rent for November from the tenant which was accepted for use and occupancy only. I grant the landlord an order of possession which is effective November 30. This order must be served on the tenant and may be filed in the Supreme Court for enforcement if required.

The tenant acknowledged owing the landlord \$457.00 and I grant the landlord a monetary order under section 67 for that sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

If the tenant does not satisfy this debt before the end of the tenancy, the landlord is free to retain the security deposit in partial satisfaction of the monetary order pursuant to section 38(3) of the Act.

Conclusion

The landlord is granted an order of possession and a monetary order for \$457.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 06, 2014

Residential Tenancy Branch

