



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPC CNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on November 3, 2014, to obtain Orders of Possession for unpaid rent and for cause and to obtain a Monetary Order for unpaid rent or utilities and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each party gave affirmed testimony and confirmed receipt of evidence served by the Landlord. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to an Order of Possession?
2. Has the Landlord proven entitlement to a Monetary Order for \$1,500.00 in unpaid rent?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced on August 1, 2014. The Tenant was required to pay rent of \$325.00 on the first and 15th of each month for a total monthly rent of \$650.00. On July 15, 2014 the Tenant paid \$325.00 as the security deposit.

The Landlord testified that on August 15, 2014 he personally served the Tenant a 1 Month Notice for cause and on October 20, 2014 he served her a 10 Day Notice for \$325.00 in unpaid rent. He argued that the last payment he received from the Tenant was on October 1, 2014, for \$325.00 which paid her rent up to October 15, 2014. He now seeks possession of the unit and rent from October 15 to December 1, 2014.

The Tenant testified that she was served with two eviction notices but that she did not have copies of them with her during the hearing so she could not say exactly which Notice she had been served or when she received them. She confirmed that she has not filed an application to dispute either Notice.

The Tenant submitted that she vacated the rental unit sometime in November 2014. Upon further clarification she indicated that she had not vacated the unit, rather she has not attended the rental unit since sometime between November 1 and 15, 2014. She argued that they had been events that occurred between her and the Landlord and that she did not feel safe returning. She confirmed that she has left her possessions inside the rental unit and has not returned the keys to the Landlord. She confirmed she had not sought assistance through the Residential Tenancy Branch and has not made an attempt to seek assistance from anyone else. She submitted that she had attempted to pay the Landlord cash on October 15, 2014 but that the Landlord refused to take her payment.

In closing, the Tenant acknowledged that she needed to vacate the rental unit, remove her possessions and return the keys to the Landlord within the next couple of days. The Tenant provided a service address during the hearing, as listed on the front page of this decision, and indicated that this address could be used as her service address for as long as was needed.

Analysis

When a tenant receives a 1 Month Notice to end tenancy for cause section 47 of the Act provides that they have (10) days to make application to dispute the Notice or the tenancy ends.

In this matter, the Tenant did not dispute the 1 Month Notice and simply continued to reside in the rental unit and continued to pay rent.

A Notice to End Tenancy can be waived and a new or continuing tenancy created, only by the express or implied consent of both parties. The question of waiver usually arises when a landlord has accepted rent from a tenant after the Notice to End Tenancy has been served. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End Tenancy, no question of "waiver" can arise as the landlord is entitled to that rent. If the landlord accepts rent for the period after the effective date of the Notice to End Tenancy, the intention of the parties will be in issue.

With regards to the 1 Month Notice, the effective date automatically corrected to September 30, 2014, pursuant to section 53 of the Act. The Landlord accepted rent of \$325.00 on October 1, 2014; therefore, I find the Landlord reinstated the tenancy when he accepted rent.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent, section 46 of the Act stipulates they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

The evidence was that the Tenant did not dispute the 10 Day Notice and she did not pay the rent in full. The effective date of the Notice would be October 30, 2014 if the Notice was served on October 20, 2014.

Based on the foregoing, I find the Tenant is conclusively presumed to have accepted that the tenancy ended on October 30, 2014, and I hereby grant the Landlord an Order of Possession.

The Landlord claimed unpaid rent of \$325.00 that was due October 15, 2014, in accordance with section 26 of the Act which stipulates a tenant must pay rent in accordance with the tenancy agreement. Based on the aforementioned, I award the Landlord unpaid rent, in the amount of **\$325.00**.

It was undisputed that a 10 Day Notice to end tenancy was served upon the Tenant for \$325.00 that was due October 15, 2014. The Landlord made his application for dispute resolution on November 03, 2014 and his hearing was not scheduled until December 9, 2014. Upon review of the Landlord's application for dispute resolution the Landlord initially claimed \$325.00 for unpaid rent and crossed that out and wrote \$1500.00.

Based on the aforementioned I find the Landlord increased his claim for unpaid rent when he was told that the hearing date would not be until December 9, 2014. Therefore, I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated to seek payment for occupancy of the rental unit after the effective date of the 10 Day Notice up to December 9, 2014, which was the date the hearing was scheduled for.

Based on the above, I amended the Landlord's application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

As noted above this tenancy ended **October 30, 2014**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for the period of November 1, 2014 to December 9, 2014.

Notwithstanding the Tenant's argument that she has not resided at the rental property since sometime in November 2014, I find the Tenant remained in full possession of the unit as she continued to have her possessions stored inside the rental unit and did not return the keys to the Landlord.

The Landlord will not regain possession of the unit until after service of the Order of Possession and will have to ready the unit and find a new tenant; therefore, I award the Landlord use and occupancy and any loss of rent for the entire period of November 1, 2014 to December 15, 2014, in the amount of **\$975.00** (3 x \$325.00)

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days after service upon the Tenant**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order for **\$1,350.00** (\$325.00 + \$975.00 + \$50.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: December 09, 2014

Residential Tenancy Branch

