



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession, a monetary Order for unpaid rent and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

The tenant confirmed that the female tenant signed, accepting the hearing documents delivered by registered mail; he was then given the documents.

Preliminary Matters

The tenants have vacated the rental unit; an Order of possession is not required.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid November 2014 rent in the sum of \$1050.00?

Background and Evidence

The tenancy commenced in January 2014; rent was \$1,050.00.

The parties described a contentious relationship toward the end of the tenancy.

The tenant confirmed receipt of a 1 month Notice to end tenancy for cause, given on November 1, 2014. A copy of the Notice was supplied as evidence.

The tenant confirmed that on November 4, 2014 the landlord personally served a 10 day Notice to end tenancy for unpaid November 2014 rent in the sum of \$1050.00. The 10 day Notice for unpaid rent was issued on November 4, 2014 and had a November 14, 2014 effective date.

The tenant said that when the landlord served the 10 day Notice they came to an agreement that the tenants would vacate by the end of November 2014 and that no further rent would need to be paid.

The landlord said that no such agreement was made in relation to rent payment. The landlord gave the tenant the Notice and expected rent to be paid.

The tenant was adamant that agreement had been reached and that the verbal agreement has weight. The landlord had a friend present at the time the agreement was made; the tenant did not have a witness with him. The tenant said he would not have agreed to vacate as they could not afford to pay rent and then pay a deposit for another rental unit. The problems in the tenancy led the tenant to accept the agreement to vacate, with rent relief offered.

The landlord was equally adamant that no such agreement was reached in relation to rent owed and that the Notice was issued, requesting rent payment.

The tenant said that they vacated on November 23, 2014; the landlord said the tenant did not return the keys until December 2, 2014. The tenant said that when he returned to the property on November 24, 2014 to retrieve some items the landlord was in the rental unit. The tenant said the landlord came to the door and began yelling at him. The landlord denied being in the unit on that date. The tenant stated that their friends had mistakenly removed a microwave from the unit and that he did return that to the landlord in early December.

The tenant said that the landlord had become upset with them when the tenants challenged the landlord's attempt to increase their rent by \$150.00 per month. The tenants then gave the landlord information on allowable rent increases.

Analysis

There is no dispute that the tenants were given a 10 day Notice to end tenancy for unpaid rent. The Notice required the tenants to pay \$1,050.00 within 5 days of November 4, 2014. Rent was not paid; the tenants vacated.

Verbal agreements, or contracts, can be found to be equally enforceable to written agreements. However, the person claiming the contract exists is in the position of proving agreement was made. In this case the tenants have more to gain that the landlord, as the tenants did occupy the rental unit during a period of time when rent would normally be due. Further, the landlord issued a Notice ending tenancy, based on the failure to pay rent. In the face of this evidence, in the absence of anything more than the tenant's submission that rent was not due, I find that the tenant has not proven a verbal agreement was reached in relation to rent owed.

I have considered the rent due, once the Notice was issued. Section 57(3) of the Act provides:

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Pursuant to section 44 of the Act, I find that the tenancy ended effective November 14, 2014; the effective date of the Notice. Therefore, the landlord is entitled to

compensation for unpaid rent in the sum of \$490.00 from November 1 to 14, 2014, inclusive.

I have then considered the date the tenants vacated the rental unit and find, on the balance of probabilities, that the tenants vacated effective November 23, 2014. I preferred the tenant's testimony that he had returned to the unit on November 24, 2014 and found the tenant's testimony had the ring of truth. I accept the landlord's testimony that the tenant was at the rental unit in early December, but I find that was due to the need to return the microwave.

Therefore, as the tenants remained in the rental unit following the effective date of the Notice, I find that the landlord is entitled to compensation for rent revenue from November 15 to 24, 2014 in the sum of \$350.00. This sum covers the period of the time the tenants overhired beyond the effective date of the Notice.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$840.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The balance of the claim is dismissed.

Conclusion

The landlord is entitled to compensation for unpaid rent and loss of rent revenue in the sum of \$840.00. The balance of the claim is dismissed.

This decision is final and binding and 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 12, 2014

Residential Tenancy Branch

