



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, OPB, MNR, MNDC, FF, CNC, CNR, O

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, cause, and breach of an agreement with the landlord, pursuant to section 55;
- a monetary order for unpaid rent, money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated October 2, 2014 ("10 Day Notice"), pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated September 24, 2014 ("1 Month Notice"), pursuant to section 47;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72; and
- other unspecified remedies.

The tenant did not attend this hearing, although I waited until 11:49 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that a 10 Day Notice was personally delivered by him to the tenant at the rental unit on October 2, 2014 at 5:30 p.m. He attached a signed witness statement as proof of service with his Application. The notice identifies

an effective vacancy date of October 12, 2014. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the 10 Day Notice on October 2, 2014.

The landlord testified that a 1 Month Notice was personally delivered by him to the tenant at the rental unit on September 24, 2014. The notice identifies an effective vacancy date of October 31, 2014. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the 10 Day Notice on September 24, 2014.

The landlord testified that he served the tenant with his Application for Dispute Resolution hearing notice and first written evidence package on October 9, 2014 via registered mail. He provided a Canada Post receipt and tracking number as proof of service, with his Application. The Canada Post tracking website confirms that the package was delivered to the tenant on October 15, 2014, and shows a signature as confirmation. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application notice and first written evidence package on October 14, 2014, the fifth day after its registered mailing.

The landlord testified that he served the tenant with his second written evidence package on November 10, 2014, via registered mail. He provided a Canada Post receipt and tracking number as proof of service, with his Application. The Canada Post tracking website confirms that the package has not yet been delivered to the tenant and a final notice for pickup has been issued before returning to sender. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's second written evidence package on November 15, 2014, the fifth day after its registered mailing. However, the second written evidence package is late evidence, as the landlord's evidence is due 14 days prior to the hearing, as per the Residential Tenancy Branch Rules of Procedure, Rule 3.14. Therefore, I will not be considering the landlord's second written evidence package for this hearing as I find that it may be prejudicial to the tenant, who did not appear at the hearing. In any event, I do not find the evidence to be necessary in making my decision, as it is simply a summary of the landlord's position for this hearing, much of which he recounted orally during the hearing.

The landlord testified that he received the tenant's application for dispute resolution hearing package on November 7, 2014, although it was dated October 9, 2014. He stated that the tenant held this mailed application back from him and he had to involve the police in order to retrieve this mail, which was sent to the basement unit of the rental unit property, where the landlord receives all his mail.

As the tenant did not attend the hearing, I advised the landlord that the tenant's application, as noted above, was dismissed without leave to reapply. Accordingly, the decision below deals only with the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent, cause or breach of an agreement with the landlord?

Is the landlord entitled to a monetary award for unpaid rent, damage and losses arising out of this tenancy?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that this tenancy began on June 1, 2014 on a month-to-month basis. Two other tenants are listed on the tenancy agreement, but the landlord confirmed that they vacated the rental unit approximately one month after June 1, 2014. The tenant occupies the main floor of a house, while another tenant occupies the basement suite of the house. Monthly rent is payable in the amount of \$1,600.00 per month due on the first day of each month. The landlord provided a written tenancy agreement with his application. A security deposit of \$800.00 was paid by the tenant prior to the occupancy date and the landlord confirmed that he continues to retain this deposit.

A condition inspection report was not prepared for this tenancy upon move-in, although the landlord testified that the rental unit was in good condition at the start of the tenancy, as he examined the rental unit with other witnesses at the time.

The landlord believes that the tenant vacated the rental unit approximately one week prior to this hearing, between November 9 and 15, 2014. However, the landlord cannot confirm this fact. The landlord checked the rental unit from the outside on November 18, 2014, and testified that it appeared to be empty. He has not spoken to the tenant or entered the rental unit to confirm whether the tenant continues to reside in the rental unit. He was not given any notice that the tenant was vacating the rental unit and he has not been provided with a forwarding address by the tenant.

The landlord testified that the tenant was late in paying rent for August and September 2014. He further stated that the tenant failed to pay rent for October 2014 in the amount

of \$1,600.00. The landlord stated that the tenant contended that he offered him rent and that the landlord would not take his rent because he wanted to evict the tenant. The landlord testified that the tenant never offered him any rent for October 2014 because he was being evicted and had he been offered rent, he would have taken it and issued a receipt for "use and occupancy only." The landlord stated that the tenant failed to pay rent for November 2014 in the amount of \$1,600.00.

The landlord has not attempted to re-rent this rental unit, as he does not know whether the tenant has vacated the rental unit and he has not inspected the rental unit for any possible damage that may need to be fixed.

During the hearing, the landlord provided details regarding the damage that the tenant caused, that he was aware of, to the front and back doors of the rental unit. He stated that he has to replace both doors, doorknobs and locks. He testified that he purchased two doors for \$320.00 and three locks for just over \$400.00 and he still required glass for the doors. The landlord admitted that he had not yet entered the rental unit to determine the full extent of damages.

The landlord noted a number of reasons for issuing the 1 Month Notice, including that the tenant was repeatedly late paying rent in August and September 2014 and did not pay rent for October and November 2014. He further stated that the tenant allowed an unreasonable number of occupants in the rental unit, about ten people at a time during parties late at night and until about 6:00 a.m. He stated that the tenant significantly interfered with or unreasonably disturbed the other occupant of the basement suite of this rental property by holding loud parties at late hours of the night, jeopardizing the sleep and the driving job of the tenant in the basement unit downstairs. The landlord admitted that the tenant's actions did not affect him personally. The landlord admitted that he did not have any proof of illegal activity committed by the tenant, although he alleged this as a reason in his notice for cause. He further stated that while the tenant caused damage to his rental unit, it did not put his property at significant risk. The landlord stated that his application for cause indicating that the rental unit must be vacated to comply with a government order and for non-compliance with an order under the legislation, were made in error.

Analysis

The tenant failed to pay the full rent of \$1,600.00 for October 2014 within five days of being deemed to have received the 10 Day Notice. Although the tenant made an application on October 7, 2014, pursuant to section 46(4) of the *Act*, within five days of being deemed to have received the 10 Day Notice on October 2, 2014, the tenant did

not appear at this hearing to present his evidence. As noted earlier in this decision, I have dismissed the tenant's application to cancel the 10 Day Notice, without leave to reapply. In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full amount of rent by October 7, 2014, five days after receiving the 10 Day Notice on October 2, 2014, led to the end of this tenancy on October 12, 2014, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by October 12, 2014. As this has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

The landlord applied for an order of possession based on a 1 Month Notice for cause. The tenant received the notice on September 24, 2014 and had 10 days to dispute the notice. The tenant made an application for dispute resolution on October 7, 2014, which is 3 days past the above deadline. However, given that I have issued an order of possession based on the 10 Day Notice for unpaid rent, I do not find it necessary to make a finding based on the 1 Month Notice for cause. Accordingly, I dismiss the landlord's application for an order of possession based on the 1 Month Notice, without leave to reapply.

The landlord applied for an order of possession based on the breach of an agreement with the landlord. The landlord stated that the tenant breached his written tenancy agreement, signed on May 24, 2014, to pay rent by the first day of each month, as he paid rent late for August and September 2014 and did not pay in October or November 2014. As above, given that I have issued an order of possession based on the 10 Day Notice for unpaid rent, I do not find it necessary to make a finding for an order of possession based on the breach of an agreement with the landlord. Accordingly, I dismiss the landlord's application for an order of possession based on the breach of an agreement with the landlord, without leave to reapply.

The landlord stated in his application that he was seeking a monetary order in the amount of \$3,200.00 in total for unpaid October and November 2014 rent.

The landlord testified that the tenant failed to pay rent for October 2014 and November 2014 in the amount of \$1,600.00 each. Although the tenant was required to vacate the property by October 12, 2014, he remained in the rental unit without paying rent, which he is not entitled to do, under Section 26 of the *Act*. The landlord stated that the tenant likely moved out from the rental unit approximately one week before this hearing, during the week of November 9 to 15, 2014. The landlord has not entered the rental unit or spoken to the tenant to confirm whether he has vacated the rental unit. The landlord checked the rental unit from the outside and noticed that it was empty on November 18, 2014. I find that the landlord is entitled to the full month of rent for November 2014 in

the amount of \$1,600.00, as there is no conclusive proof that the tenant has, in fact, vacated the rental unit, he has not provided notice to vacate the rental unit, and he has not provided a forwarding address to the landlord. I have issued the above order of possession for these reasons.

The landlord also applied for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. However, he did not provide any details, including the type of damage or the amount of damage sought, at the time of his application. He simply stated that he was only seeking \$3,200.00 in unpaid rent for October and November 2014. The landlord did not provide any documentary evidence, such as condition inspection reports, pictures or receipts, to justify the damage and loss claimed. As the tenant did not attend the hearing, I find that he does not have proper notice of the landlord's damage claim. Accordingly, I do not amend the landlord's application to include the additional \$720.00 for replacement doors and locks, claimed by the landlord during the hearing. I dismiss the landlord's application applied for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, with leave to reapply.

Accordingly, the full monthly rent of \$1,600.00 for each of October and November 2014, totals \$3,200.00. I find that the landlord is entitled to rental arrears outstanding in the amount of \$3,200.00 from the tenant.

The landlord testified that he continues to hold the tenant's security deposit of \$800.00. Although the landlord did not apply to retain the tenant's security deposit, I find that in accordance with the offsetting provisions of section 72 of the Act, the landlord is entitled to retain the tenant's security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

As the tenant did not appear at this hearing, I dismiss his entire application, including to cancel the 10 Day Notice and 1 Month Notice, to recover the filing fee and for other unspecified remedies, without leave to reapply.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service of this Order** on the tenant. Should the tenant or anyone on the premises fail to comply

with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$2,450.00 against the tenant as follows:

| | |
|---|-------------------|
| October 2014 Rent | \$1,600.00 |
| Half November 2014 Rent | 1,600.00 |
| Less Security Deposit | -800.00 |
| Recovery of Filing Fee for this application | 50.00 |
| Total Monetary Award | \$2,450.00 |

The landlord is provided with a monetary order in the amount of \$2,450.00 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the landlord's application for an order of possession based on the 1 Month Notice for cause and an order of possession based on the tenant's breach of an agreement with the landlord, both without leave to reapply.

I dismiss the landlord's application applied for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, with leave to reapply. The landlord is at liberty to make another application for dispute resolution if he intends to pursue the above claim.

The tenant's entire application is dismissed without leave to reapply.

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 2, 2014

Residential Tenancy Branch

