



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The male Landlord stated that on December 30, 2014 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord wishes to rely upon as evidence were sent to the Tenant, via registered mail. The male Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant submitted no documentary evidence.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on October 19, 2014 and that the parties entered into a written tenancy agreement, a copy of which was submitted in evidence.

The male Landlord stated that the Tenant was required to pay monthly rent of \$525.00. The male Tenant stated that the Tenant was required to pay monthly rent of \$575.00. The tenancy agreement declares that rent is \$525.00 per month.

The Landlord and the Tenant agree that the tenancy agreement declares the rent is due, in advance, by the 30th day of each month but that they subsequently agreed that the rent would be due on the first day of each month.

The Landlord and the Tenant agree that the Tenant was required to pay a security deposit of \$262.50.

The female Landlord stated that the following amounts have been paid since this tenancy began:

- October 19, 2014 - \$262.50 was paid towards the security deposit
- October 20, 2014 - \$100.00 in cash, a portion of which was for rent for October and a portion of which was for the security deposit
- Mid-November - \$287.50 for rent
- November 14, 2014 - \$523.83 for rent
- Third Week of November - \$660.00 in the form of a government cheque that was, for reasons unknown to the Landlord, not honoured by the government
- December 02, 2014 - \$287.50 in rent for January.

The female Landlord stated that after the \$523.83 payment was made on November 14, 2014, the Landlord gave the Tenant \$123.83 in cash. She stated that this was given at the request of the Tenant, who promised to return it at a later date. The female Landlord stated that after the \$287.50 payment was made on December 02, 2014, the Landlord gave the Tenant \$182.50 in cash. She stated that this was given at the request of the Tenant, who promised to return it at a later date.

The male Tenant stated that the following amounts have been paid since this tenancy began:

- October 19, 2014 – he personally delivered a government cheque to the Landlord, in the amount of \$287.50, which was to be applied to rent for October and the security deposit
- October 17, 2014 – the government paid rent of \$287.50 directly to the Landlord, on behalf of the male Tenant, for rent for November
- October 17, 2014 – the government paid rent of \$287.50 directly to the Landlord, on behalf of the female Tenant, for rent for November
- November 15, 2014 – he paid \$250.00 in cash to the Landlord for the security deposit
- November 17, 2014 – the government paid rent of \$287.50 directly to the Landlord, on behalf of the male Tenant, for rent for December
- November 17, 2014 – the government paid rent of \$287.50 directly to the Landlord, on behalf of the female Tenant, for rent for December
- December 17, 2014 – the government paid rent of \$287.50 directly to the Landlord, on behalf of the male Tenant, for rent for December
- December 14, 2014 – a government cheque in the amount of \$660.00 was personally delivered to the Landlord for rent which was, for reasons unknown to

the Tenant, not honoured by the government. He stated that this cheque was provided for rent for December as well as some rent the Landlord argued was still outstanding.

The male Landlord stated that on December 15, 2014 he posted a Ten Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit, which had a declared effective date of December 25, 2014. He stated that the Notice was inadvertently dated December 25, 2014. A copy of the Notice was submitted in evidence.

The male Tenant stated that he located the Notice to End Tenancy on the door of his rental unit on December 16, 2014.

Analysis

I favour the testimony of the male Landlord, who stated that rent was \$525.00 per month, over the testimony of the male Tenant, who stated that rent was \$575.00 per month, as the Landlord's testimony is corroborated by the written tenancy agreement. On the basis of the testimony of both parties, I find that rent is due by the first day of each month.

On the basis of the undisputed evidence, I find that the tenancy began on October 19, 2014. I therefore find that the Tenant was obligated to pay pro-rated rent, at a daily rate of \$16.94, for 13 days in October, which equates to \$220.22. I find the Tenant was obligated to pay \$1,575.00 in rent for the period between November 01, 2014 and January 31, 2015.

For the duration of this tenancy I therefore find that the Tenant was obligated to pay total rent of \$1,270.22 for the period between October 19, 2014 and December 31, 2014; another \$525.00 in rent for January of 2015; plus a security in of \$262.50, for a total of \$2,057.72.

There is a general legal principle that places the burden of proving a loss of the person who is claiming compensation, not on the person who is denying the damage. In these circumstances, the burden of proof rests with the Landlord and I find that the Landlord has submitted insufficient evidence to show how much rent, if any, is owed by the Tenant.

The Landlord contends that a total of \$1,461.33 was paid during this tenancy. If I were to accept the Landlord's testimony in this regard I would conclude that the Tenant still owes \$596.39 in rent/security deposit. This is inconsistent with the details of the dispute outlined in the Application for Dispute Resolution, in which the Landlord contends the Tenant still owes \$1,185.00.

If I were to accept the Landlord's calculations regarding rent that was paid, I would conclude that \$1,461.33 had been paid by December 02, 2014. Given that the Tenant was obligated to pay \$1,270.22 in rent for the period between October 19, 2014 and December 31, 2014 plus a security in of \$262.50, for a total of \$1,532.72, I find that the Tenant should have owed \$71.39 for the period ending December 31, 2014. In the Ten

Day Notice to End Tenancy that the Landlord served on December 15, 2014, the Landlord declared that the Tenant had not paid rent of \$660.00. The information on the Notice to End Tenancy is inconsistent with the information provided by the Landlord at the hearing.

In view of the inconsistencies in the evidence provided by the Landlord, I find that the Landlord has failed to establish the amount of rent currently due. I found the testimony provided during the hearing by the Landlord was confusing and, on more than one occasion, the Landlord changed her testimony regarding the amounts paid on particular dates. I therefore am unable to rely on her testimony to establish the amount of rent due. In determining this matter I was heavily influenced by the absence of any records that clearly show what payments have been made during the tenancy.

On the basis of the testimony of the Tenant, I find that the Tenant has not paid more than \$1,975.00 during this tenancy, which does not include the \$660.00 cheque which was not honoured. Given that \$2,057.72 in rent/security deposit was due for this tenancy for the period ending January 31, 2015, I find that the Tenant owes at least \$82.72 in rent/security deposit. I therefore find that the Landlord is entitled to a compensation for unpaid rent in the amount of \$82.72.

As I am unable to accurately determine the amount of rent due on the basis of the information provided by the Landlord, I dismiss the Landlord's application for compensation for unpaid rent in excess of \$82.72.

In determining this matter I have placed no weight on the Landlord's submission that the Landlord loaned the Tenant \$306.33. Even if I were to accept the Landlord's testimony that she loaned this money to the Tenant, that transaction is not related to their tenancy agreement and I do not have jurisdiction over that transaction.

On the basis of the undisputed evidence, I find that the on December 16, 2014 Tenant received the Ten Day Notice to End Tenancy which is the subject of this dispute.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant received this Notice on December 16, 2014, I find that the earliest effective date of the Notice was December 26, 2014.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was December 26, 2014.

Section 46 of the *Act* stipulates that a Tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy ended on the effective date of the Notice. On this basis I grant the Landlord an Order of Possession.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$132.72, which is comprised of \$82.72 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain \$132.72 from the Tenant's security deposit in full satisfaction of this monetary claim.

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: January 20, 2015

Residential Tenancy Branch

