



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KENSON REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*). The tenant applied to cancel the 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 of the *Act*. The landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended at the hearing and were given full opportunity to be heard, to present evidence and to make submissions.

Service of Documents

The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent was served to the tenant on November 25, 2014 by posting it on the tenant's door. The tenant confirmed receipt of the notice. The 10 Day Notice was deemed served to the tenant on November 28, 2014, 3 days after its posting. The tenant personally served the Application for Dispute Resolution Hearing package to the landlord on December 1, 2014. The landlord was duly served December 1, 2014. The landlord provided documentary evidence, in the form of a receipt and tracking number, showing that he served the tenant with the Application for Dispute Resolution hearing package on December 11, 2014 by registered mail. The tenant confirmed receiving the landlord's Application for Dispute Resolution package. I accept that the tenant was served with the landlord's Application for Dispute Resolution hearing package on December 16, 2014, 5 days after its mailing.

Preliminary Issue: Adjournment of Hearing

At the outset, the tenant made an application requesting an adjournment of the proceedings for personal reasons and to provide further evidence. He submitted that his mother was very ill in hospital and that he had had to leave town on short notice. Given his personal circumstances, he argued that he was unable to proceed with the hearing. The tenant also argued that he required an adjournment to submit further evidence with respect to this matter. The landlord opposed the application for an adjournment stating that the matter had been outstanding for over one month and that he required possession of the unit so that he could re-rent it.

Rule 6 of the Residential Tenancy Branch Rules of Procedure state that the “Residential Tenancy Branch will reschedule a dispute resolution proceeding if written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least 3 business days before the scheduled date for the dispute resolution hearing”. While the tenant testified that he had been out of town for approximately one week, he had not taken steps to attempt to adjourn this proceeding beforehand. Nor did the tenant have an agent attend to either explain why he could not attend or represent him at the hearing, subject to Rule 6.

The criteria provided for granting an adjournment, under Rule 6.4 are;

- whether the purpose for the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1...
- whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether the party had sufficient notice of the dispute resolution hearing...
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- the possible prejudice to each party.

The tenant testified mainly that he required time to submit more material. Particularly, he requested time to provide information about his unpaid rent and his submission that a payment has gone unrecorded by the landlord. On further canvassing about the steps he would take to provide this information, the tenant was unable to articulate any way in which he would be able to provide evidence to support his claim of a payment. Particularly, his testimony was that; the payment was made in cash; that he received no receipt; that he had not got the money from the bank or from any institution that could provide proof; and that he could not provide evidence of his payment from the job he

received the funds from. There is no likelihood that the tenant would be able to further support his case with more time. This is also evidence he could have sought in the month since he applied for dispute resolution. The tenant was able to provide his oral testimony of the unrecorded payment. I found that this payment would not determine the nature of the outcome of the hearing in such a way that would impact the tenant's ability to be heard or provide evidence; the tenant would not be prejudiced by proceeding with this hearing and made clear submissions with respect to his position on the matter.

The tenant was the initial applicant in this matter. The tenant testified that, due to a personal crisis, he was unable to continue with the hearing. However, during the course of my consideration of the adjournment application, the tenant and landlord both presented the majority of their evidence for their respective applications.

The landlord testified as to the impact of delaying this matter given that the tenant had not moved out and was not paying rent. The tenant testified that he had in fact moved out but that he had not had an opportunity to tell the landlord or clean and empty the rental unit. While there is no neglect by the tenant beyond a failure to take advantage of adjournment option, I find the landlord would be significantly prejudiced by a delay in this matter by adjourning the hearing and delaying this matter when he claims he is not receiving rent and cannot rent out the unit to anyone else.

The request for an adjournment was not granted. The hearing proceeded.

Issues to be Decided

Is the landlord entitled to an Order of Possession and/or a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord gave evidence that the original tenancy agreement for the premises began as a fixed term tenancy. This tenancy began January 2012 and continued, with fixed term tenancy renewals, through to December 31, 2014. Rental for this unit was established at \$1450.00 payable on the first of each month. The landlord testified that he continued to hold the \$725.00 security deposit that the tenant paid on December 17, 2011. The tenant testified that he no longer resides in the rental unit. The landlord testified that he has not been advised that the tenant had vacated the residence.

The landlord has applied for an Order of Possession for unpaid rent for the month of November 2014. The landlord testified that the tenant did not pay rent of \$1450.00 due on November 1, 2014. The landlord issued a 10 Day Notice to End Tenancy for Unpaid

Rent. The landlord testified that the tenant did not pay the November 2014 rent after receiving the 10 Day Notice on November 28, 2014. The tenant did file an application for dispute resolution on December 1, 2014. The landlord also applied for dispute resolution, seeking an Order of Possession for unpaid rent.

The landlord testified that, as of the date of this hearing, the tenant has not paid rent for December 2014. In his testimony, the tenant confirmed that he did not pay rent for December but that he did make a partial payment in November. The landlord has no record of this payment. The tenant acknowledged a current unpaid rental amount, providing reasons why he had failed to pay rent or pay rent late at different times during his tenancy. The tenant does not have a receipt or documentary evidence of the partial November rent payment to which he referred. The tenant confirmed the testimony of the landlord that he is often late in paying his rent and this is further evidenced by the accounting provided in documentary evidence by the landlord.

The landlord is also seeking a monetary award of \$2900.00 for the months of November and December 2014. The landlord provided an accounting of the tenant's rental payments from January 2014. The tenant paid January 2014 rent over the course of three payments throughout the month. He did the same for the months of February, March, April, May, June, July, August, September, and October 2014. Each of those months, the tenant paid at least three late payments before paying his full rental amount for the month. The accounting shows that November 2014 rent remains unpaid. The accounting shows no rental payment in December 2014. The landlord claims the remaining, outstanding rental amounts;

Item	Amount
Unpaid Rent – November 2014	\$1450.00
Unpaid Rent – December 2014	1450.00
Partial Rent - January 2015	725.00
Rent amount owed according to landlord	\$2950.00

The landlord also claims an amount of \$150.00 for late payments. An addendum to the rental agreement was submitted by the landlord. It was initialled by both parties and states, at number 1 of the addendum that, “the owner will charge the tenant a total of \$32.00...for each bounced check or late payment of rent”.

Analysis

Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the

Regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.” The tenant is required, under the Act, to pay the rent in full on the date agreed upon in the relevant tenancy agreement.

Order of Possession: Even if the tenant’s evidence of an undocumented payment is accepted, the tenant failed to pay the November rent in full within five days of receiving the 10 Day Notice to End Tenancy. The tenant did make application pursuant to section 46(4) of the Act within five days of receiving the 10 Day Notice. However, he does not dispute his failure to pay rent on time and in full to the landlord. As the tenant has not met his obligations with respect to the payment of rent, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Monetary Order: I find that the landlord is entitled to receive an order for unpaid rent in November and December 2014. The landlord testified that, given the fact that the tenant had not cleaned or removed all his belongings, he is unlikely to be in a position to rent the premises until mid to late January 2014. I accept the evidence offered by the landlord with respect to unpaid rent and the lack of opportunity to re-rent the unit as the landlord was not aware that the tenant had vacated and the unit has not been cleaned. I find that the landlord is also entitled to partial reimbursement for January rent based on the testimony of the tenant that the rental unit requires clearing and cleaning. I am issuing the attached monetary order that includes the landlord’s application for \$2900.00 in unpaid rent for November and December 2014 and a partial amount of \$725.00 for January 2015.

Based on the production of evidence of the landlord’s late fee policy, the landlord is also entitled to \$64.00 for late fees regarding unpaid rent in November and December 2014 as well as a late fee of \$32.00 for January 2015. The landlord is entitled to a total of \$96.00 in late fees.

The landlord testified that he continues to hold a security deposit of \$725.00. I find that the landlord is entitled to retain the security deposit and any interest to the date of this decision in partial satisfaction of the rental arrears. There is no interest payable for 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.

Conclusion

I dismiss the tenant's application to cancel the notice to end tenancy and I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlords as follows:

Item	Amount
Unpaid Rent – November 2014	\$1450.00
Unpaid Rent – December 2014	1450.00
Partial Rent - January 2015	725.00
Less Security Deposit	-725.00
Plus Late Fees (3 Months @ \$32.00 = \$96.00)	96.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Award	\$3,046.00

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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 14, 2015

Residential Tenancy Branch

