



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Denwood Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent and money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

The landlord and tenant attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and neither party raised any issue regarding service of the evidence or application.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and to recover the filing fee?

Background and Evidence

These parties were in several dispute resolution hearings in 2014, on the same issues as in the present application. The landlord in the present hearing further declared, as in the previous hearing, that there was no tenancy and that the tenant was obligated to pay \$1000 per month.

The landlord disputed that there was a tenancy, stated that the tenant was a “squatter,” and disputed the amount of monthly rent. The most recent Decision by another Arbitrator was issued on December 29, 2014, from a hearing held on December 23, 2014. In that Decision of December 29, 2014, the other Arbitrator determined that there was a tenancy and that monthly rent was \$600. Therefore, due to the legal principle of *res judicata*, whether or not there was a tenancy and the amount of monthly rent were issues not before me as those have previously been determined.

The other Arbitrator declined to grant the landlord an order of possession for the rental unit, but granted the landlord a monetary order for \$4200, which was for monthly unpaid rent for the period of March 2014, when the tenancy began, until September 2014, the month of the first dispute resolution hearing. The landlord was told that if rent remains unpaid, he could issue another notice to end the tenancy.

In this case, the landlord gave evidence that on December 23, 2014, he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), by registered mail, listing unpaid rent of \$10,133 as of 2014. The effective vacancy date listed on the Notice was January 2, 2015. The landlord was questioned about the date on the Notice, and stated there was a clerical error, as the Notice indicates that it was dated November 23, 2014.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within 5 days. The Notice also explained that alternatively the tenant had 5 days to dispute the Notice by making an application for dispute resolution.

The landlord submitted that he has never been paid any rent from this tenant since he moved in. Although the landlord listed \$10,133 on the Notice for unpaid rent, the landlord’s monetary claim in their application was \$5000.

Though no monetary claim particulars were listed in the landlord’s application, his evidence shows that he was also claiming for unpaid utilities and rubbish clean-up.

The tenant confirmed receiving the Notice on January 2, 2015, by registered mail, and that he has not paid rent or disputed the Notice by making his own application for dispute resolution.

Analysis

I find the landlord submitted sufficient evidence, undisputed by the tenant, to prove that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within 5 days of service and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective 2 days after service of the order upon the tenant.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

As to the landlord's monetary claim, the landlord has previously been granted a monetary order for unpaid rent through the month of September 2014. Another Arbitrator determined that monthly rent is \$600; therefore I am only able to consider any alleged unpaid rent beginning with the month of October 2014.

I find that the evidence shows that the tenant owed, but did not pay monthly rent of \$600 for October, November, December 2014, and January 2015. I therefore find the landlord is entitled to a monetary order for \$2400.

As to unpaid utilities, without a written tenancy agreement, I am not able to determine if water was to be provided with the tenancy or if the tenant was to provide for that utility. Further, the landlord's application for dispute resolution did not provide a detailed breakdown or the particulars of his claim, so that I was unable to determine for what amount the landlord claimed for unpaid utilities. Similarly, I was unable to determine for what amount the landlord claimed for rubbish removal, as this was only listed in his documentary evidence filed just 1 week prior to the hearing, not filed with his application as required by the Rules.

I therefore find the landlord is not entitled to unpaid utilities and rubbish removal.

I grant the landlord recovery of his filing fee of \$50.

Due to the above, I find the landlord is entitled to a monetary award of \$2450, comprised of outstanding rent of \$2400 from October 2014 through January, 2015 and the \$50 filing fee paid by the landlord for this application.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$2450, which is enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord's application has been granted in part.

The landlord is granted an order of possession for the rental unit.

The landlord is granted a monetary order of \$2450.

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 29, 2015

Residential Tenancy Branch

