



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding My Dream Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT CNR OPT RR OPR MNR MNDC FF

Introduction

This hearing dealt with applications by the tenant and the landlord. The tenant applied to cancel a notice to end tenancy and an extension of time to make the application, as well as for monetary compensation and a reduction in rent. The landlord applied for an order of possession and a monetary order for unpaid rent. The landlord and the tenant participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's application and evidence. Both parties were given full opportunity to give affirmed testimony and present their evidence.

I determined that the issue of the notice to end tenancy for unpaid rent took precedence, and only heard evidence on that issue. I will address the remainder of the tenant's application in the conclusion of my decision.

Preliminary Issue – Extension of Time

The tenant applied for an extension of time to make his application. However, in the hearing the tenant stated that he received the notice to end tenancy on January 19, 2015, and he made his application to cancel the notice on January 23, 2015. I therefore found that the tenant made his application on time and it was not necessary for me to consider an extension of time.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Background and Evidence

The tenancy began on October 1, 2104. Rent in the amount of \$4200 is payable in advance on the first day of each month. The tenant failed to pay rent in the month of January 2015 and on January 16, 2015 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The landlord stated that the tenant's rent cheque for February 2015 also bounced.

The tenant acknowledged that after his rent cheque for January 2015 bounced, he refused to pay the rent. He withheld the rent because electricity is supposed to be included in the rent but the tenant had to put the hydro account in his name and he has paid for hydro from before his tenancy commenced. The tenant stated that he was not aware that his February rent cheque had bounced.

Analysis

I accept the evidence before me that the tenant has failed to pay the rent owed within the five days granted under section 46(4) of the Act. Although it is the landlord's responsibility to have the hydro account in their name when that utility is included in the rent, the tenant did not have grounds under the Act to withhold rent. I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. The landlord is therefore entitled to an order of possession.

As for the unpaid rent, the tenant acknowledged withholding January 2015 rent, and I find that the landlord is therefore entitled to a monetary order for \$4200. The landlord is also entitled to recovery of the \$50 filing fee for the cost of their application.

As the tenant's application to cancel the notice to end tenancy was not successful, he is not entitled to recovery of the filing fee for the cost of his application.

Conclusion

The tenant's application to cancel the notice to end tenancy is dismissed.

The tenant's application for monetary compensation is dismissed with leave to reapply.

I grant the landlord an order of possession effective two days from service. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I grant the landlord an order under section 67 for the balance due of \$4250. This order may be filed in the Small Claims Court and enforced as an order of that Court.

I note that the landlord continues to hold any security deposit in trust. Under section 72 of the Act, the landlord may retain the security deposit as partial compensation for the monetary order.

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: February 16, 2015

Residential Tenancy Branch

