



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CITY OF VANCOUVER and KINGSWAY CONTINENTAL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF (Landlords' Application)
 CNR, FF (Tenant's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlords and the Tenant.

The Landlords applied for an Order of Possession and a Monetary Order for unpaid rent. The Tenant applied to cancel the notice to end tenancy. Both parties applied to recover the cost of the filing fee for making their Application.

The Landlords' agent and the Tenant appeared for the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenant's Application and documentary evidence by personal service. The Tenant confirmed receipt of the Landlords' Application and documentary evidence by registered mail.

The parties were informed of the instructions for the conduct of the proceedings and no questions were raised about the process. The parties were given an opportunity to present evidence, make submissions, and cross examine the other party in relation to the evidence provided.

Preliminary Issues

During the hearing, the Landlords' agent requested to keep the Tenant's security deposit in partial satisfaction of the Landlords' claim for unpaid rent. The Landlords' agent explained that he was advised by the Residential Tenancy Branch not to elect this on his Application. However, he did not understand the reason why and, had he known he could have elected to keep the Tenant's security deposit, he would have done so on his Application.

The Landlord also requested to amend his monetary claim to include unpaid rent for February 2015 as this also remains unpaid by the Tenant.

As a result, I amended the Landlords' Application with both requests pursuant to my authority under Section 64(3) (c) of the Act

Issue(s) to be Decided

- Is the Tenant entitled to cancel the notice to end tenancy for unpaid rent?
- Are the Landlords entitled to an Order of Possession for unpaid rent?
- Are the Landlords entitled to a Monetary Order for rental arrears?
- Are the Landlords entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

Both parties agreed that this tenancy started on July 30, 2014 on a month to month basis. A written tenancy agreement was signed by the Landlords on July 11, 2014 and by the Tenant on July 30, 2014. The agreement established rent payable by the Tenant in the amount of \$700.00 on the first day of each month. The Tenant paid the Landlords a security deposit of \$350.00 at the start of the tenancy.

The Landlords' agent explained that the Tenant was applying for subsidized rent from a third party organization and the Landlords assisted the Tenant by helping him complete the relevant paperwork. If the Tenant was successful in getting his rent subsidized, the Tenant's portion would be reduced to \$375.00 and the third party organization would then pay the Tenant the remaining amount which would then be given to the Landlord as one monthly rent payment of \$700.00 by the Tenant.

The Tenant provided testimony on the difficulties he had with the third party organization in getting the subsidy but agreed that he was responsible for paying \$700.00 total rent to the Landlord.

The Landlords' agent testified that even though the Tenant had made an application for a subsidy on his rent from the third party organization which had not been approved, the Tenant only paid \$375.00 on August 1, 2014. This left the Tenant in rental arrears for the first month of the tenancy in the amount of \$325.00.

The Landlords' agent testified that the Tenant has since failed to pay rent for this tenancy. As a result, the Landlords' agent served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on January 23, 2015 by attaching it to the Tenant's door. The Tenant confirmed receipt of the Notice the next

day and it was provided by both parties into written evidence. The Notice shows an expected date of vacancy of February 2, 2015 due to \$4,200.00 in unpaid rent due on January 1, 2015.

The Landlords' agent testified that the Tenant is in rental arrears for six months of rent (September 2014 to February 2015) totaling \$4,200.00, as well as \$325.00 for the unpaid portion of August 2014 rent.

The Landlords' agent testified that the Tenant had been informed numerous times about his failure to pay rent but the Tenant insists on paying his rent by direct debit. However, the Landlords, one of whom is a city municipality, cannot facilitate this method of payment. The Landlords' agent was asked to explain the written notices sent to the Tenant regarding payment of rent.

The Landlords' agent testified that in the first two months of the tenancy, the previous Landlords' agent had contact with the Tenant but this was limited due to medical problems the previous Landlords' agent was having. The Landlords' agent testified that on October 24, 2014 the Tenant was sent a letter informing him that rent for September and October 2014 had not been paid.

The Landlords' agent testified that on December 10, 2014 the Tenant was sent another written letter; this was provided into written evidence by the Tenant. This letter explained that: the Tenant was in rent arrears; that direct deposit payment was not available; and that rent could only be paid by cash, personal cheque or money order.

The Landlords' agent testified that another letter was sent to the Tenant on December 23, 2014 by the management team again asking for rent to be paid.

The Landlords' agent referred to another letter dated January 7, 2015 which was provided into written evidence. In this letter the city manager writes to the Tenant and explains:

"I have investigated the option of providing direct deposit to any and all tenants presently living in COV housing and unfortunately this option of paying rent is not available at this time. I understand our concern that cheques are expensive to pensioners, however you may want check with some Credit Unions as they offer free checking accounts, another option is some banking institutions offer free money orders to those over 60+ years".

[Reproduced as written]

The Landlords' agent also testified to another letter sent to the Tenant on January 29, 2015 asking the Tenant to meet with him to discuss the issues. The Landlords' agent submitted that he did not want this matter to get to dispute resolution and the Landlords have tried to do everything possible to resolve the issue of the rental arrears.

The Tenant testified that at the start of the tenancy he had provided the Landlords with a signed Automatic Debit Form (the "ADF") along with a voided cheque so that his rent could be paid by direct debit from his bank account. The Tenant testified that he is a busy working man and does not have time to give his rent directly to the Landlord and it works from him to have his rent come out of his bank account where his pension is paid into.

The Tenant testified that he had assumed that the Landlords processed his ADF and that his rent would be directly debit from his account. However, the Tenant noticed the next month that the remainder of the August and September 2014 rent had not been taken out of his account by the Landlords.

The Tenant testified that he spoke to another male agent of the Landlords and informed them of this issue. The Tenant testified that he was informed that the matter was being looked into and that it would be resolved.

The Tenant testified that because he does not check his mail often as he does all his business on line, he located the Landlords' letter dated October 24, 2014 in early December 2014 advising that his rent had not been paid. The Tenant testified that he looked into the matter and realized that there was a problem with his debit account which he then subsequently corrected.

The Tenant explained that it had come to his attention that the Landlords were not accepting his rent by direct debit. The Tenant testified that he spoke to a female agent of the Landlords that he was still ok to use the ADF to pay his rent and that the issue would be resolved by January 15, 2015. The Tenant explained that he provided the Landlords with another updated ADF and did not hear anything else from the Landlords.

The Tenant confirmed receipt of all the written letters testified to by the Landlords' agent but denied having any meeting to discuss the issue with the Landlords. The Tenant submits that he is not in any rental arrears and is not avoiding paying rent; however, the Tenant requests that the Landlord should be ordered to accept his rent by direct debit, and that the updated ADF which he provided to the Landlords should be processed by them.

The Landlords' agent rebutted the Tenant's testimony and explained that the Landlords do not have any provisions to accept rent from either the Tenant or any other renters in the residential building by direct deposit. The Landlords' agent acknowledged that they had looked into doing this for the Tenant but it is not possible and at no time was the Tenant informed that his rent could be exclusively paid by direct debit. The Landlords' agent pointed to the fact that the Tenant had paid his security deposit and a portion of his first month's rent by money order which the Tenant confirmed.

I asked the Landlords' agent whether he would be willing to continue with this tenancy and withdraw the Notice if the Tenant agreed to pay the full amount of rent to him immediately. The Landlords' agent agreed to this proposal on the condition that the Tenant pays the rental arrears by cash, postdated cheques, personal cheque or money order. However, while the Tenant agreed to the amount of rent owing, the Tenant refused to pay rent in the methods suggested by the Landlords' agent, submitting that he was not in rental arrears and that the money was there for the Landlords to collect through his direct debit. The Tenant submitted that getting cheques to give to the Landlord cost him \$50.00 and he refuses to undergo this expense.

Analysis

I first turn my mind to the Tenant's Application to cancel the Notice issued on January 23, 2015. I find that the contents of the Notice and the approved form used by the Landlord's agent complied with the requirements of Section 52 of the Act.

Section 47(4) of the Act provides a tenant with five days to make an Application to dispute the Notice or vacate the rental unit on the vacancy date of the Notice. The Tenant testified that he received the Notice on January 24, 2015 and made his Application on January 29, 2015. Therefore, I find that the Tenant made his Application to dispute the Notice within the time limit set out by the Act.

There is no dispute between the parties that the Landlords are not in receipt of the Tenant's rent due at this moment in time for the amount of \$4,525.00. However, the Tenant is refusing to pay rent using one of the three methods offered by the Landlords, namely by cash, cheque or money order.

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not the landlord complies with the Act. The written tenancy agreement between the parties makes no mention of the method of payment for rent except that the Tenant is responsible for paying it to the Landlords.

Notwithstanding the Tenant's arguments and his desire to pay by electronic transfer, I find that the Landlords have not breached the Act, the Regulations, or the tenancy agreement, by requiring that rent be paid in one of three standard payment methods offered to the Tenant. The burden lies with the Tenant to ensure rent is received by the Landlords in a manner in which the Landlords accept payments.

Section 14 of the Act allows a tenancy agreement to be changed or amended, other than a standard term, by agreement of both parties. Therefore, if the Tenant relied and was dependant solely on making rent payment to the Landlords by electronic transfer, then it would have been reasonable and prudent on the Tenant to have discussed this issue with the Landlords before entering into the tenancy.

Instead, I find the Tenant paid his security deposit and part of his first month's rent by money order and then sought to change the method of rent payment to electronic transfer without agreement from the Landlords. There is also insufficient evidence to show that an electronic debit transaction for rent had taken place at any time during the tenancy that would have then established this method of paying rent for this tenancy.

I also find that the Landlords should not be without rent because the Tenant incurs charges for issuing cheques; the Landlords offered alternative methods of rent payment to the Tenant, such as payment by cash, which would have prevented the Tenant incurring any cost for paying rent.

While I accept that several of the Landlords' agents enquired into the possibility of the Tenant paying his rent by direct debit, I find that there is insufficient evidence to show that the Landlords explicitly agreed to this, either by way of a term in the tenancy agreement or by accepting rent using this method. Instead, I find that the Landlords informed the Tenant multiple times in writing that electronic transfer of rent could not be offered as a method for receiving the Tenant's rent.

Based on the foregoing, I find that the Tenant did not have authority to impose a method of payment on the Landlords which they have not established or set up to receive. Therefore the Tenant has not made rent monies available to the Landlords and is in breach of Section 26(1) of the Act. Accordingly, I am unable to cancel the Notice.

As the vacancy date of the Notice has now passed, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenant. The Landlord is also entitled to recover unpaid rent in the amount of **\$4,525.00**. As the Landlords have been successful in this matter, the Landlords are also entitled to recover the **\$50.00** Application filing fee pursuant to Section 72(1) of the Act.

Therefore, the total amount payable by the Tenant to the Landlords is **\$4,575.00**.

As the Landlord already holds the Tenant's **\$350.00** security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded the outstanding balance of **\$4,225.00**.

Conclusion

The Tenant has breached the Act by failing to provide rent to the Landlords under the tenancy agreement. Therefore, the Tenant's Application is dismissed without leave to re-apply.

Accordingly, the Landlords are granted an Order of Possession effective **two days after service on the Tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court.

The Landlords are allowed to keep the Tenant's security deposit.

The Landlords are also granted a Monetary Order for the balance of rent in the amount **\$4,225.00**, pursuant to Section 67 of the Act. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court.

Copies of both orders for service and enforcement are attached to the Landlords' copy of this decision.

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 17, 2015

Residential Tenancy Branch

