



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MND, MNDC, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for damage, to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

At the hearing the Landlord withdrew his application for a monetary Order. The Landlord retains the right to file another application for a monetary Order at a later date.

The Agent for the Landlord stated that on February 25, 2015 he personally served the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence to the Tenant. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent and to recover the fee for filing an Application for Dispute Resolution.

The Tenant stated that on March 02, 2015 he served his Application for Dispute Resolution and the Notice of Hearing to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

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

Issue(s) to be Decided

Should the Notice to End Tenancy be set aside or should the Landlord be granted an Order of Possession?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on July 04, 2002 and that during the latter portion of the tenancy the Tenant was required to pay monthly rent of \$560.00, which included a water tariff.

The Agent for the Landlord stated that rent was due by the fourth day of each month. The Tenant could not recall when rent was due, as he just paid it whenever he could.

The Agent for the Landlord stated that the Tenant paid a security deposit of \$250.00 on July 04, 2002. The Tenant could not recall how much he paid as a security deposit.

The Landlord and the Tenant agree that no rent has been paid for February or March of 2015. The parties agree that the last time rent was paid was on September 27, 2014, at which time the Tenant paid \$1,020.00. They agree that this payment was applied to rent for December of 2013 and January of 2014.

The Tenant stated that he did not have authority from the Residential Tenancy Branch to withhold any portion of his rent and that he did not pay his rent on a monthly basis simply because he did not have the money.

The Agent for the Landlord stated that on February 19, 2015 he personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, dated February 19, 2015. The Tenant acknowledged receiving this Notice from the Agent for the Landlord, although he cannot recall when he received the Notice. This is the Notice to End Tenancy the Tenant disputed on February 20, 2015.

The Notice to End Tenancy, dated February 19, 2015, declares that the Tenant must vacate the rental unit by March 01, 2015.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that during the latter portion of the tenancy the Tenant was required to pay monthly rent of \$560.00 by the fourth day of each month. On the basis of the undisputed evidence, I find that the Tenant has not paid rent since September 27, 2014 and that a significant amount of rent was due on February 05, 2014.

If rent is not paid when it is due, section 46(1) of the *Residential Tenancy Act (Act)* entitles landlords to end a tenancy by providing proper written notice. On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy, dated February 19, 2015, was personally served to the Tenant served to the Tenant on February 19, 2015, pursuant to section 46 of the *Act*.

As rent was not paid in full by February 04, 2015; the Tenant was served with a Ten Day Notice to End Tenancy on February 19, 2015; and the Tenant did not pay the overdue rent within five days of receiving the Notice, I find that the Landlord has grounds to end this tenancy pursuant to section 46 of the *Act*. I therefore dismiss the Tenant's application to cancel the Notice to End Tenancy and I grant the Landlord's application for 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 of \$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 keep \$50.00 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: March 24, 2015

Residential Tenancy Branch

