



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RLPSC - PM
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, OPC, MNR, CNC, FF

Introduction

This was a cross-application hearing.

On February 27, 2015 the tenant applied to cancel a 1 month Notice ending tenancy for cause issued on February 18, 2015.

On March 13, 2015 the landlord applied requesting an Order of Possession for unpaid rent and cause, a monetary Order for unpaid rent and utilities and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on March 18, 2015 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the application. A Canada Post tracking number was provided as evidence of service.

The landlord stated that on April 2, 2015 they discovered the tenant vacated the unit. The tenant had last been seen at the unit in mid- March. During the hearing the landlord checked the Canada Post web site and found that on March 19, 2015 the mail had been forwarded to a new address. The last entry on the Canada Post web site, March 24, 2015 indicated that the mail was available for pick-up.

Section 71(2) of the Act provides:

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

(a) that a document must be served in a manner the director considers necessary, despite sections 88 [how to give or serve documents generally] and 89 [special rules for certain documents];

(b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;

(c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

Section 90 of the Act determines mail is deemed served on the 5th day after mailing. From the evidence before me the tenant has been served to an address given to Canada Post, as his new address. Therefore, pursuant to section 72 of the Act, I find that the tenant has been sufficiently served with notice of this hearing, effective March 23, 2015. A failure to retrieve registered mail does not allow a party to avoid service.

The landlord confirmed receipt of the tenant's hearing package.

The tenant did not attend the hearing; although his advocate did attend for a short period of time.

The landlord now has possession of the rental unit.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent and utilities?

Background and Evidence

The tenancy commenced on February 15, 2005. Rent was \$450.00 per month; eventually increased to \$468.00. A security deposit in the sum of \$225.00 was paid on March 7, 2005. A copy of the tenancy agreement was supplied as evidence.

On March 28, 2014 the parties signed an addendum to the tenancy agreement. A copy of the addendum was supplied as evidence. The tenant agreed to rent in the sum of \$468.00 plus the addition of \$200.00 per month for utilities.

On February 18, 2015 the landlord issued a 1 month Notice to end tenancy for cause; the Notice had an effective date of March 31, 2015. The Notice was personally given to the tenant on February 19, 2015.

On March 4, 2015 the landlord issued a 10 day Notice to end tenancy for unpaid rent or utilities. The Notice had an effective date of March 14, 2015. That Notice was personally given to the tenant on March 4, 2015.

The landlord said the tenant had not been seen at the rental unit since mid-March 2015. The neighbouring renter had mentioned seeing the tenant; although the date he was seen was unconfirmed. The tenant disputed the February Notice; not the March Notice. It appears that by March 19, 2015 the tenant had supplied Cana Post with a forwarding address.

The landlord has claimed unpaid rent and utilities for March (\$668.00) and April 2015 (\$668.00).

The landlord said that a move-out condition inspection report had not been scheduled and that they have yet to estimate costs for what appears to be considerable damage caused to the rental unit.

After the hearing had proceeded for 20 minutes the tenant's advocate entered the conference call. The advocate was late as he had been dealing with another matter. The tenant was not present with the advocate. The advocate was not aware that the landlord now had possession of the rental unit; he had been prepared to assist the tenant with his request to cancel a Notice ending tenancy. The advocate had no instructions to act as agent for the tenant or to make submissions in relation to rent owed. At this point the advocate excused himself from the hearing. The tenant did not attend the hearing.

Analysis

In the absence of evidence to the contrary, I find that the tenant was served with a Notices ending tenancy that required the tenant to vacate the rental unit on March 14 and March 31, 2015, pursuant to sections 46 and 47 of the Act.

The tenant disputed only the 1 month Notice to end tenancy for cause issued on February 18, 2015 (effective March 31, 2015); however he failed to attend the hearing in support of his application. Further, the tenant has vacated the rental unit.

Section 47(5) of the Act provides:

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

*(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
(b) must vacate the rental unit by that date.*

As the tenant applied to cancel the February 18, 2015 Notice and failed to attend the hearing in support of the application, I find that his application is dismissed. Therefore, pursuant to section 47(5) of the Act, I find that the tenant is conclusively presumed to have accepted the tenancy ended.

There was no evidence before me establishing the date the tenant actually vacated, although he had done so by April 2, 2015. It is possible that the tenant decided to vacate the unit based on the 10 day Notice ending tenancy effective date of March 14, 2015; however the landlord was not able to establish the actual date of vacancy. Therefore, I have find pursuant to section 44(f) of the Act that the tenancy ended effective March 31, 2015.

Therefore, I find that the landlord is entitled to compensation in the sum of \$666.00 for unpaid March rent and utilities. As the tenancy ended effective March 31, 2015 and the vacancy date is not established I find that the claim for unpaid rent for April is dismissed. The landlord testified that the unit is not currently habitable. The landlord may be in a position to apply requesting a loss of rent revenue beyond March 2015.

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord indicated they wished to set off any sum owed from the security deposit held in trust. The landlord is holding a security deposit in the sum of \$225.00, plus interest of \$7.97. Section 72(2) of the Act provides an arbitrator with the ability to deduct any money owed by a tenant to a landlord, from the deposit due to the tenant. Therefore, I find that the landlord may retain the tenant's security deposit plus interest, in the amount of \$232.97, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$483.03. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to a monetary Order for unpaid March 2015 rent and utilities.

The landlord may retain the security deposit and interest.

The claim for unpaid April 2015 rent and utilities is dismissed.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 07, 2015

Residential Tenancy Branch

