



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

After reviewing all of the documents before me with the tenants and the landlord's agent I was satisfied that the tenants were in receipt of all of the documentation that had been submitted to the Branch by the landlord. The tenants did not submit any documentary evidence for this proceeding.

Shortly after the hearing commenced, the tenants requested an adjournment on the basis that their Advocate was not available to attend today's hearing. The tenants claimed that the Advocate had indicated to them that the Notices to End Tenancy were not legal. I found the tenants' request for an adjournment unsupported. In other words, the Advocate had not appeared to request an adjournment or requested an adjournment in writing prior to the hearing. Nor, had any written submissions as to the legality of the subject Notices been received from an Advocate. I confirmed the content of the Notices to End Tenancy that the tenants had before them. I was satisfied that the Notices to End Tenancy that were given to the tenants were in the approved form. I permitted the tenants ample opportunity to provide their version of events and I did not grant the request for an adjournment.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

By way of this Application, the landlord seeks an Order of Possession based upon unpaid rent and monetary compensation for unpaid rent for the months up to and including February 2015.

It was undisputed that the tenancy commenced approximately 10 years ago. The landlord is holding a security deposit of \$375.00 and rent is due on the 1st of every month. The rent has remained unchanged since the tenancy commenced and the landlord had been receiving rent of \$750.02 directly from Income Assistance until the tenant approached Income Assistance in August or September 2014 and redirected the rent payment to the tenant. The property is currently subject to foreclosure proceedings.

The landlord's agent testified that a 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) was served by posting on the door of the rental unit on December 22, 2014, in the presence of a witness. The tenants denied receiving a 2 Month Notice posted on their door in December 2014.

The landlord's agent testified that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was personally served upon the male tenant on February 20, 2015 in the presence of a witness. The 10 Day Notice indicates \$2,100.00 in rent is outstanding with a breakdown as follows: \$750.00 due October 1, 2014, \$750.00 due November 1, 2014 and \$600.00 due February 1, 2015. There is no effective date stated on the 10 Day Notice provided for my review. The tenant denied receiving the 10 Day Notice on February 20, 2015 and stated that the landlord's agent never had a witness with her when she attends the rental unit.

With respect to service of the 2 Month Notice and the 10 Day Notice, the landlord's agent pointed to two Proof of Service documents that were signed by a witness and the landlord's agent indicated that the witness could be called to testify. I noted that the Proof of Service documents indicate that both the 2 Month Notice and the 10 Day Notice were posted on the door of the rental unit on the same date they were signed by the landlord.

The tenants did acknowledge that they received a copy of a 2 Month Notice and a 10 Day Notice from the landlord's agent, in person, on March 1, 2015. The landlord's agent confirmed that she handed an envelope to the tenants with copies of both Notices on or about March 1, 2015. Upon receiving the Notices to End Tenancy on March 1, 2015 the tenants stated that they started searching for a new place to live but have

been unsuccessful. The tenants did not file to dispute either of the Notices to End Tenancy.

With respect to payment of rent I was provided largely disputed submissions from the parties that I have summarized below.

The landlord testified that rent for September 2014 had been paid to him by Income Assistance. The tenant testified that on August 31, 2014 he was advised by the lawyer for the landlord's bank contacted him that the property was going into foreclosure and advised the tenants to send rent to the bank. The tenant testified that he mailed \$750.00 in cash to the bank's Vancouver branch via regular mail for September 2014 rent.

The landlord did not receive rent for October 2014 and in late October he had a discussion with the tenants whereby the tenants informed the landlord that they had been notified of the foreclosure proceedings by the bank's lawyer. The landlord's agent also recalled that the tenants had indicated that they needed the money to buy a truck seeing as they would be moving soon. The tenant testified that he sent \$750.00 in cash to the bank via regular mail for October's rent.

The landlord's agent stated the bank's lawyer confirmed, via email, that money was not received from the tenants in September or October 2014. The tenant acknowledged that he had had discussions with the bank's lawyer about that issue and conceded that it was not wise to send cash in the mail. The landlord offered to provide a copy of the email as evidence.

For the month of November 2014 the landlord testified that rent was not received. The tenants testified that \$750.00 was given to the landlord's agent in cash and that no receipt was given. .

For the month of December 2014 the landlord's agent testified that rent was collected from the female tenant, in cash, after running into the tenants at the grocery store on or about December 22, 2014. This submission was agreed upon by the tenants. Both parties provided consistent testimony that the landlord's agent did not issue a receipt for the cash payment.

For the month of January 2015 the landlord's agent testified that \$150.00 was received from the tenants in cash and that in February 2015 no rent was paid; however, the landlord's written submission indicates that \$150.00 was received for February 2015 and the written submission is silent with respect to rent for January 2015. The tenants

testified that \$750.00 was given to the landlord's agent for January 2015 and \$750.00 was given to the landlord's agent for February 2015.

For the months of March 2015 the female tenant testified that she sent a money order to the landlord's bank. For the month of April 2015 the tenant's acknowledged that they had not paid rent.

The landlord provided copies of the following documentary evidence: the 2 Month Notice; the 10 Day Notice; Proof of Service for both of the Notices; cheque stubs showing the receipt of rent from Income Assistance for several months; bank statements for several months; and, appraisal reports for the subject property.

The tenants did not provide any documentary evidence for this proceeding.

Analysis

Under the Act, a tenant who receives a Notice to End Tenancy from the landlord in the approved form has a certain amount of time to dispute the Notice by filing an Application for Dispute Resolution. Both parties provided consistent testimony that the tenants were served with a 10 day Notice and a 2 Month Notice on March 1, 2015; therefore, I have considered that to be the date the tenants were in receipt of the subject Notices to End Tenancy. I proceed to consider enforceability of the 10 Day Notice first.

A tenant in receipt of a 10 Day Notice has 5 days to either pay the amount of the outstanding rent or dispute the 10 Day Notice by filing an Application for Dispute Resolution. If the rent is paid within 5 days then the 10 Day Notice is nullified. If the rent is not paid and the tenant does not file to dispute the Notice then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and must vacate the rental unit.

Although the tenants were of the position that they had paid all of the rent at that no rent was outstanding when they received the 10 Day Notice, a position I do not accept for the reasons indicated below, their opportunity to dispute the Notice and put forth that argument was within 5 days of receiving the Notice. In failing to show they either paid the \$2,100.00 or dispute the Notice within five days I find, pursuant to section 45(6) of the Act, that the tenants are conclusively presumed to have accepted that the tenancy would end.

While I found both parties provided inconsistent submissions and testimony at various times during the hearing I accept, on the balance of probabilities, that rent for the

months of October and November 2014 was not paid. The landlords provided consistent submissions, verbally and in writing and supported by the 10 Day Notice, that rent for October and November 2014 had not been received. I found the tenant's submissions that cash was sent to the landlord's bank via regular mail to be unlikely and unsupported by any other evidence. Nor, did the tenants provide a reason for not redirecting the rent portion of their Income Assistance to the bank. Rather, I found the landlord's agent's testimony that the tenants had indicated they needed money to purchase a truck since they were going to be moving to have a ring of truth.

I note that the effective date is blank on the 10 Day Notice. Since the tenants received the 10 Day Notice on March 1, 2015 I amend the 10 Day Notice so that the effective date reads March 11, 2015. Since 10 days has long since passed and the tenants acknowledged they did not pay any rent for April 2015 as they are preparing to move, I provide the landlords with an Order of Possession effective two (2) days after service upon the tenants.

Having found the tenancy already at an end due to unpaid rent I find it unnecessary to consider whether an Order of Possession should be provided to enforce the 2 Month Notice.

For the reasons given already, I accept that the tenants failed to pay rent for October and November 2014 and I find the landlord entitled to recover rent in the amount of \$1,500.00 from the tenants for those months. I make no award for unpaid rent for January or February 2015 as I found the landlord's oral and written submissions as to rent received for these two months to be inconsistent and I refuse to rely upon those inconsistent submissions.

I authorize the landlords to retain the tenant's security deposit in partial satisfaction of the unpaid rent. I further award the landlord recover of the \$50.00 filing fee that was paid for this Application. Therefore, the landlord is provided a Monetary Order in the net amount of \$1,175.00 [\$1,500.00 rent - \$375.00 security deposit + \$50.00 filing fee] to serve upon the tenants and enforce as necessary.

It should be noted that under section 51 of the Act, a tenant in receipt of a 2 Month Notice, is entitled to receive compensation from the landlord in an amount equivalent to one month's rent. This compensation may be provided in the form of the last month being free of rent or the landlord providing a refund of the last month's rent. Based upon the lack of documentary evidence from the tenants, I find I am unable to verify whether the tenants' paid rent for March 2015; nor, did the landlord seek compensation for unpaid or loss of rent for March or April 2015. Therefore, I leave the tenant's

compensation to be resolved between the parties; however, if they cannot resolve that matter the parties are at liberty to file an Application as appropriate.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenants.

The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$1,175.00 to serve upon the tenants and enforce as necessary.

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: April 14, 2015

Residential Tenancy Branch

