



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF, MT, CNR, MNDC, DRI, CNC, OLC

Introduction

This hearing convened as a result of Cross Applications.

The Landlords in their Application for Dispute Resolution filed February 13, 2015 they sought an Order of Possession based on Unpaid Rent, a Monetary Order for unpaid rent, an Order to retain the security deposit and to recover the filing fee.

The Tenant filed two Applications for Dispute Resolution; namely:

1. his Application filed February 6, 2015 wherein the Tenant sought an Order for more time to make an application to dispute a Notice to End tenancy pursuant to section 66(1), an Order Cancelling the Notice to End Tenancy for unpaid rent issued on February 2, 2015, and a Monetary Order for \$3,402.51 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.
2. his Application filed February 10, 2015 wherein he sought an Order disputing an additional rent increase, an Order canceling a Notice to End Tenancy for cause issued on February 1, 2015, and an Order compelling the Landlord to comply with the Act, regulation or tenancy agreement.

Both parties attended the first hearing scheduled for March 9, 2015. At that time, I was informed that the Tenant's Application filed February 10, 2015 was scheduled to be heard on March 12, 2015.

At the March 9, 2015 hearing, the Tenant also indicated that he required the assistance of an advocate. I adjourned and joined all three Applications by interim decision made March 9, 2015. This decision should be read in conjunction with my decision of March 9, 2015.

All three Applications were set to be heard on April 21, 2015. At the March 9, 2015 hearing, the Tenant provided an address to which the Notice of Adjourned hearing was sent. As the Tenant failed to attend the April 21, 2015 hearing, the balance of his Applications are dismissed without leave to reapply.

At the April 21, 2015 hearing, the Landlords confirmed that the Tenant did not pay a security deposit; accordingly, the Landlords request to retain the security deposit is dismissed.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The remaining issues contained in the Landlords' Application filed February 13, 2015 were dealt with during the hearing on April 21, 2015.

Issues to be Decided

1. Are the Landlords entitled to a Monetary Order for unpaid rent?
2. Should the Landlords recover the fee paid to file their Application?

Background and Evidence

Introduced in evidence was a copy of the Residential Tenancy Agreement dated October 1, 2014 and which indicated a six month fixed term tenancy to March 1, 2015. The Tenant agreed to pay \$555.00 per month on the 1st of the month. While the agreement provided for a security deposit to be paid, the Landlords confirmed no such payment was made.

The Tenant failed to pay rent for February 2015 and the Landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on February 2, 2015 (the "Notice"). Introduced in evidence was a Proof of Service of the Notice indicating that the Tenant was personally served on February 2, 2015 at 4:15 p.m. W.R. signed the Proof of Service indicating he witnessed the Tenant being personally served.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, February 7, 2015. The Notice also explains the

Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Tenant did not pay his February rent.

The Landlord testified that the Tenant moved out of the rental unit on February 28, 2015.

At the March 9, 2015 hearing I granted the Landlords' request for an Order of Possession. The Landlords were not able to rent the rental unit until April 2015. The Tenant also failed to pay rent for March 2015. At the April 21, 2015 hearing the Landlord confirmed he sought the sum of \$1,160 including the February and March rent as well as the \$50 filing fee.

The Landlords testified that the Tenant also filed for relief in the Provincial Court of British Columbia Small Claims Division. The Landlords confirmed that a settlement of the Small Claims action was reached on April 1, 2015 and pursuant to the settlement the Landlords were to pay the Tenant \$200.00. The Landlords testified that none of the Landlords claims were heard in Small Claims Court.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent and did not attend the April 21, 2015 hearing to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlords are in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay rent.

I find that the Landlords have established a total monetary claim of \$1,160.00 comprised of \$555.00 for February 2015 rent and \$555.00 for March 2015 rent and the \$50.00 fee paid by the Landlords for this application. I grant the Landlords an order under section 67 for the sum of \$1,160.00.

This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The Tenant failed to pay rent and did not attend the April 21, 2015 hearing to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlords are granted a monetary for \$1,160.00.

This decision is final and binding on the parties, except as 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 22, 2015

Residential Tenancy Branch

