



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNDC, FF, CNR

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's March 6, 2015 Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and damage or loss under the Act and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

On February 17, 2015 the tenant applied to cancel a Notice ending tenancy for unpaid rent. That application was subsequently amended. The landlord said she received the tenant's applications.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The parties confirmed receipt of evidence supplied by each, with the applications. Both parties then made late evidence submissions; the tenant on March 18, 2015 and the landlord on March 19, 2015. The parties were made aware of the requirement of the Rules of Procedure; that evidence should be submitted with the respective applications and, not less than 14 days prior to the hearing.

There was no agreement in relation to the content of the late evidence. Therefore, as that evidence was late and in dispute it was set aside. The parties were at liberty to make oral submissions in relation to their late evidence. The tenant's late evidence was not before me.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent or should the February 10, 2015 Notice ending tenancy be cancelled?

Is the landlord entitled to a monetary Order for unpaid February and March 2015 rent?

Background and Evidence

The tenancy commenced in September 2014 when the tenant began to pay rent directly to the landlord. A previous tenant, who signed a tenancy agreement, had allowed the tenant to move into the unit; initially she was an occupant. The tenant who had signed a tenancy agreement vacated the unit sometime in August 2014.

The tenant agreed that from September to December 2014 she paid rent in the sum of \$1,100.00 each month. The landlord and tenant did not sign a tenancy agreement. Initially the tenant said that rent was due any time during the month. Later in the hearing the tenant referred to late payments and did not disagree that rent was in fact due on the 1st day of each month.

The landlord confirmed she accepted cash rent payments and did not issue receipts for those payments. Payments were made on several days, over the period of a month.

There was no dispute that all of January 2015 rent was paid; however, the landlord said it was a \$320.00 payment made on February 26, 2015 that covered the balance of January 2015 rent owed. The tenant confirmed she made this payment, but said it was toward February 2015 rent owed.

The tenant said that she then made a \$100.00 payment on March 5 and a \$700.00 payment on March 9, 2015. The tenant had witnesses sign a document, to show they were present when they saw the landlord accept the rent. The landlord had a copy of that document before her and said that she did sign a piece of paper presented to her by the tenant on February 26, 2015, when the \$320.00 payment was made. The landlord said that the other signature on this document; allegedly confirming further payments, is not her signature and does not even spell her name correctly.

The tenant said that if she had owed January 2015 rent that sum should have been included on the Notice ending tenancy. The tenant stated that she overpaid February 2015 rent by \$20.00 and has not paid March 2015 rent owed.

The 10 day Notice ending tenancy for unpaid rent issued on February 10, 2015 had an effective date of February 20, 2015.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,100.00 within 5 days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that

the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within 5 days.

The tenant received the Notice on February 10, 2015. The tenant confirmed she did not apply requesting more time to cancel the Notice.

The landlord has claimed \$2,200.00 for unpaid February and March 2015 rent.

Analysis

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant confirmed she received this Notice on February 10, 2015, I find that the earliest effective date of the Notice is February 20, 2015.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on February 20, 2015, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice ending tenancy to either pay the outstanding rent, in full, or to file an Application for Dispute Resolution to dispute the Notice. The tenant has confirmed that the payment made following receipt of the Notice; \$320.00 on February 26, 2015, did not result in payment of all rent due February 1, 2015. When the tenant disputed the Notice the tenant had the opportunity to prove she had made a payment within 5 days of February 10, 2015, of all rent due, but she has confirmed that did not occur.

The tenant was required to pay all of the rent no later than Sunday February 15, 2015. The tenant had until the next business day, February 16, 2015, to dispute the Notice. However, the tenant disputed the Notice on February 17, 2015. This is established by the receipt issued at the time an application was made and is the point at which an application is found to be made.

Based on the tenant's failure to dispute the Notice within 5 days of February 10, 2015 and her failure to pay all rent due no later than February 15, 2015, I find, pursuant to section 46(5) of the Act that the tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice; February 20, 2015. The tenant has been over-holding in the unit since that time.

In relation to rent owed, I have considered the disputed testimony and the landlord's failure to issue receipts for cash payments made. The tenant has the burden of proving her claim, on the balance of probabilities that rent totaling \$1,120.00 was paid and only March 2015 rent; less \$20.00, is outstanding.

My assessment and finding is based on the evidence, the credibility of the parties and the likelihood of each submission. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events. The tenant has the burden of proving her claim that all of February rent was paid in 3 installments. However, I find the landlord has impeded the tenant's ability to show rent was paid by failing to comply with section 26(2) of the Act, by issuing receipts for the cash payments made.

The tenant and landlord each had a document that the landlord agreed she signed, to confirm the single \$320.00 payment. Based on this acknowledgment and the Notice issued on February 10, 2015 indicating that only \$1,100.00 rent was owed effective February 1, 2015; I find that all of January rent had been paid that the February 26, 2015 payment is applied to February 2015 rent owed. Effective February 26, 2015 the balance of rent owed was then \$780.00.

In relation to the balance of the payments the tenant said she had made, I find, on the balance of probabilities that those payments were in fact given to the landlord. Even though the tenant's documents, meant to prove payment, apparently showed some inconsistencies, I find it is just as likely that payment was made as the landlord never issued receipts. The tenant provided specific dates payments were made; and this led me to conclude that she had not fabricated her submission. Further, the tenant has agreed she did not pay March 2015 rent; leading me to find the tenant was consistent in acknowledging her debt to the landlord.

Therefore, I find that February 2015 rent has been paid and that the landlord is entitled to compensation in the sum of \$1,080.00 for March 2015 rent; paid as a per diem sum. The balance of the claim is dismissed.

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 did not submit a claim against a security deposit. Payment of a deposit is in dispute.

The landlord has been granted an Order of possession that is effective 2 days after service to 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.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,130.00. 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 an Order of possession and monetary Order for unpaid March 2015 rent. The balance of the claim 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*.

April 9, 2015

Residential Tenancy Branch

