



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LEADER VICTORY INVESTMENT CO LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant was assisted by his translator, who also acted as the tenant's advocate. The landlord was represented by its agent, who confirmed that he had full authority to act on behalf of the landlord.

The agent testified that he served the tenant with the dispute resolution package on 25 April 2015 in person. The agent testified that the dispute resolution package included all evidence before me. The tenant appeared and did not contest service. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 89 of the Act.

The agent testified that he served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 2 April 2015 in person. The landlord provided me with a witnessed Proof of Service document that sets out the same.

The agent testified that the tenant took the 10 Day Notice from the landlord and tore it into pieces. The tenant admits to taking a paper from the agent and tearing it, but testified that he did not know the importance of that paper. The tenant testified that he tore up notice because he was insulted. I find that the tenant was personally served with the 10 Day Notice and that the tenant's action of tearing the notice into pieces does not defeat service. On the basis of this evidence, I am satisfied that the tenant was served with the 10 Day Notice pursuant to section 88 of the Act on 2 April 2015.

The agent testified that he received the tenant's evidence and had time to review the tenant's evidence. On this basis, I find that the landlord was served with the tenant's evidence in accordance with section 88 of the Act.

Scope of Current Hearing

This tenancy was subject of an earlier application by the tenant. In that application the tenant sought repairs to the rental unit. I found that the tenant had failed to show, on a balance of probabilities, that the repairs he requested were required. I made this finding on the lack of corroborating real evidence of the tenant's testimony, which was in conflict with the agent's testimony.

The tenant provided evidence that appears to be in support of his earlier application. The tenant submitted a video in which a very loud sound is audible in the bedroom. This evidence would have been appropriate evidence for the tenant's prior application and may be appropriate evidence for a future application by the tenant; however, the tenant did not have any application before me at the time of this hearing.

As the tenant has not made any application with the Residential Tenancy Branch (the Branch), the scope of this hearing is limited to the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent and tenant, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This is a long-term tenancy. Current monthly rent is \$634.00 and is payable on the first.

On 2 April 2015 the landlord issued the 10 Day Notice to the tenant. The 10 Day Notice set out that the tenant had failed to pay rent that was due 1 April 2015 in the amount of \$634.00. The 10 Day Notice set out an effective date of 13 April 2015.

The agent testified that the landlord has not received payment from the tenant since the issuance of the 10 Day Notice. The agent testified that there are no outstanding orders of this Branch with respect to this tenancy. The agent testified that the landlord has not received any receipts from the tenant for emergency repairs.

The tenant testified that there are leaks in the rental unit and a persistent loud noise in his bedroom that require repairs.

The tenant did not apply to cancel the 10 Day Notice. The tenant admits he did not pay his rent when due. The tenant admits that he did not pay the outstanding rent amount within five days of receiving the 10 Day Notice. The tenant submitted that he was willing to pay his rent to the Branch, but did not want the rent monies to go to his landlord until repairs to the rental unit were complete. The tenant attempted to pay his outstanding rent to the Branch and was told that the Branch could not accept the rent.

Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The agent testified that the tenant failed to pay rent for April and May. The tenant admits that he did not pay rent for April and May. The tenant submitted that he did so because of the need for repairs to the rental unit. The tenant testified that he attempted to pay the Branch his rent, presumably to hold in trust until the repairs were completed. This is not a service that the Branch provides.

There is no evidence before me that indicates that the tenant was entitled to deduct amounts for emergency repairs that he had conducted (pursuant to subsection 33(3)) or as a result of a prior order from the Branch.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by 13 April 2015. As that has not occurred, I find that the landlord is entitled to an order of possession.

Generally, a landlord is granted an order of possession effective two days from service on the tenant; however, in this case, because of the tenant's attempts, in good faith, to deliver his rent to this Branch and the difficulty the tenant has experienced in securing repairs to the rental unit, I am exercising my discretion to provide a lengthier time for the tenant to vacate. The landlord is awarded an order of possession effective five days from service on the tenant.

The agent has testified that the tenant failed to pay rent to the landlord for both April and May. The tenant admits that he did not pay this rent. I find that the landlord has shown its entitlement to rent for April and May. The landlord is entitled to a monetary award in the amount of \$1,268.00.

The landlord seeks to recover its filing fee from the tenant. Subsection 72(1) permits an arbitrator to make a discretionary award of repayment of a filing fee from one party to another. Generally this repayment is ordered where a party has been successful in its application. In this case, the tenant wrongly withheld rent, but did so under the mistaken belief that this would help him to gain assistance from the landlord in solving deficits with his rental unit. As the tenant was acting in good faith by withholding rent and attempting to deliver it to this Branch, I am exercising my discretion to refuse to award recovery of the filing fee.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,268.00. The landlord is provided with this order and the tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The landlord is provided with a formal copy of an order of possession effective five days from service on the tenant. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: May 28, 2015

Residential Tenancy Branch

