



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 the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order. The hearing was conducted via teleconference and was attended by the landlord and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties did not agree on any of the terms of the tenancy agreement other than the fact that rent was due on the 1st of each month. No written tenancy agreement was provided by either party.

The landlord submitted the tenancy started as a 1 year fixed term tenancy that converted to a month to month tenancy for the monthly rent of \$1,100.00 with a security deposit of \$600.00 paid. The tenant submitted the tenancy began as a month to month tenancy for the monthly rent of \$1,000.00 with a security deposit of \$550.00 paid.

The parties did agree that the original rent sought by the landlord was higher than what was eventually agreed upon but due to the tenant's circumstances the landlord agreed to a lower rent.

The landlord testified the tenant failed to pay rent for the month of March 2015 and on March 30, 2015 he issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord submitted into evidence a copy of this Notice dated March 30, 2015 with an effective vacancy date of April 10, 2015 for unpaid rent in the amount of \$1,100.00.

The landlord submitted he served the Notice by posting it on the door on March 30, 2015 and that this service was witnessed by a third party. The third party did not attend the hearing or provide a written statement. The landlord testified since the Notice was issued the tenant has failed to pay rent for the months of April, May, and June 2015.

The tenant testified that she paid the landlord cash in the amount of \$800.00 on March 12, 2015. The tenant testified that she never did receive a copy of the 10 Day Notice to End Tenancy for Unpaid Rent until she received the landlord's evidence package on May 11, 2015. The tenant confirmed that she filed an Application for Dispute Resolution seeking to cancel that Notice on June 6, 2015, 26 days after she states she first received a copy of the Notice.

The tenant confirmed that she has paid no rent for the months of April, May, and June 2015. The tenant testified that she only paid rent in the amount of \$800.00 in March 2015 because the landlord had failed to make repairs to the property despite her asking him to do so for a very long time. The tenant provided no evidence of any such requests.

Analysis

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

In the case before me, the parties disagree on most of the terms of the tenancy agreement as follows:

Term	Landlord	Tenant
Rent amount	\$1,100.00	\$1,000.00
Due Date	1 st of each month	1 st of each month
Security Deposit	\$600.00	\$550.00

There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation for the loss. In regards to the claim for unpaid rent the burden of proving that amount of rent that was not paid is predicated on the amount of rent that was agreed to at the start of the tenancy. As such, as the landlord is making the claim for lost rent the burden rests with him to establish the amount of rent that was agreed upon.

Section 13 of the *Act* stipulates that the landlord is required to prepare a tenancy agreement in writing and that he must, within 21 days after the parties enter into a tenancy agreement, provide the tenant with a copy of the tenancy agreement.

When two parties provide equally plausible but differing accounts of an agreement, the party with the burden must provide additional evidence to establish their position. In this case, the landlord has failed to provide a copy of a tenancy agreement or any other evidence to confirm the rent amount to be \$1,100.00. As such, I find the rent amount to be \$1,000.00 and that the security deposit is \$550.00 as stipulated by the tenant.

Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has the right under this *Act* to deduct all or a portion of the rent. There is no provision in the *Act* that allows the tenant to withhold any portion of rent for repairs that have been requested but not provided. As per the tenant's testimony I find the tenant withheld rent from the landlord without authorisation under the *Act*.

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

Section 46(4) allows the tenant to either pay the rent or file an Application for Dispute Resolution to dispute the notice within 5 days of receipt of the notice.

As I have found the tenant had no authority pursuant to the *Act* to withhold any portion of rent I find that regardless of whether not the tenant had applied to dispute the Notice she would not be entitled to cancel the Notice. Therefore, I find the landlord has the right to end the tenancy in accordance with Section 46.

As the tenant has testified that she did not receive the 10 Day Notice to End Tenancy for Unpaid Rent issued on March 30, 2015 until May 11, 2015 I find that the effective date is amended to May 21, 2015 pursuant to Section 53 of the *Act*.

In regard to the landlord's claim for rent in the amount of \$1,100.00 for the month of March 2015 and considering the tenant's testimony that she paid the landlord \$800.00 on March 12, 2015, the burden of proving that rent was not paid in cash, as claimed by the tenant, rests with the landlord.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. Cash receipts can help to establish when a rent payment has *not* been made.

When a landlord regularly provides receipts for cash payments there is an expectation that a tenant will be able to produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has not been made.

When a tenant has previously made cash payments and has never been provided with a receipt, there is no expectation that the tenant can provide a receipt for such a payment.

In these circumstances the landlord's failure to provide receipts for cash payments made during this tenancy can significantly impair his ability to prove that the tenant did not pay a portion of rent. The landlord did not submit any other evidence, such as a copy of a payment ledger, to corroborate his claim that the tenant did not pay \$800.00 in cash on March 12, 2015.

Based on the above, and considering my finding that rent for the tenancy is \$1,000.00 per month I find the landlord is entitled to \$200.00 for the month of March 2015. I also find, based on the finding of the amount of rent per month and the testimony of both parties, the landlord is entitled to \$3,000.00 for unpaid rent for the months of April, May, and June 2015.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3,250.00** comprised of \$3,200.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$550.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,700.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: June 16, 2015

Residential Tenancy Branch

