



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes cnr, mndc, opr, mnsd, ff

Introduction

The tenant has filed an Application for Dispute Resolution pursuant to the *Residential Tenancy Act*, S.B.C. 2002, c. 78, and I was designated to conduct a hearing with respect to this application. The tenant seeks an order cancelling a 10 day Notice to End Tenancy. The hearing was scheduled to be heard by telephone conference, with specific details and instructions about the time and date, phone numbers, passcode, and other procedures, given on the "Notice of a Dispute Resolution Hearing". The tenant failed to join the conference call hearing.

The landlord has also applied for dispute resolution, and requests an Order of Possession, a Monetary Order for unpaid rent, and an order to retain the security deposit. The landlord attended the hearing. I accept that the landlord properly served the tenant with his claim by way of registered mail, as permitted under section 89 of the Residential Tenancy Act.

Information for this hearing was provided to the Residential Tenancy Office by an Insolvency Administrator, which included notice that the tenant was an undischarged bankrupt, and with details and documents as to the bankruptcy proceedings. This information satisfies me that the Trustee-in-bankruptcy was aware of this hearing and the landlord's claim, and I consider this representative of the tenant to have been sufficiently served with notice of this hearing. No representative of the Trustee attended the hearing.

Issues to Be Decided

- Is the 10 Day Notice to End Tenancy served upon the tenant effective to end this tenancy, and entitle the landlord to an Order of Possession, or should the Notice be cancelled?
- Is there rent money due and payable by the tenant to the landlord?
- What is the effect of the tenant's assignment into bankruptcy upon the landlord's claim?

- Is the landlord entitled to retain the tenant's security deposit?

Background and Evidence

This basement tenancy began on April 1, 2014. Prior to this tenancy, the tenant had rented the entire home together with his spouse. As a result of their failed marriage, the former tenancy ended, and two new tenancies began, with the spouse renting the upper portion of the home, and the tenant renting the basement. The former security deposit was split and assigned to the new tenancies, with a \$400.00 deposit being credited to the tenant. His monthly rent is \$800.00, due on the 1st day of each month.

The tenant filed an assignment into bankruptcy effective January 27, 2015. Prior to this time, he owed the sum of \$3,300.00 to the landlord. The Form 79 "Statement of Affairs" confirms that at the time of the assignment this sum was owed to the landlord, as an unsecured creditor.

Commencing in May, 2015 the tenant again falls into arrears. He paid only \$400.00 towards his May rent, and has paid no rent since.

Analysis

Section 26(1) of the Residential Tenancy Act requires that a tenant must pay rent when it is due under the tenancy agreement. This means the tenant was required to pay his full rent on the first day of each month, even though the landlord may have accepted partial payments of rent from time to time. The landlord was therefore entitled on May 18, 2015 in law to serve the Notice ending this tenancy. Upon receipt of that notice, the tenant should have paid the rental arrears within the required 5 day period, in order to have the tenancy continue. The tenant failed to do so. The Notice is therefore found effective to end this tenancy, and the landlord has established a right to possession. The tenant's application to cancel the Notice is dismissed.

The landlord seeks a monetary award for the \$3,300.00 of rent previously owed, for \$400.00 owed for May, 2015, \$800.00 for June, 2015, and \$400.00 for his loss of rent up to July 15, 2015 (by which time he expects to have vacant possession).

I have no jurisdiction over the claim for the past debt of \$3,300.00. As part of the bankruptcy process there is a Stay of Proceedings as against the tenant, made pursuant to section 69.3(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3. That stay of proceedings applies to any creditor "with a claim provable in the bankruptcy". The \$3,300.00 former debt of the tenant to the landlord is such a claim.

The balance of the landlord's claim arises after the assignment into bankruptcy and is not subject to the Stay of Proceedings, and the landlord is entitled to an award of \$1,600.00 representing the landlord's loss of rent from May, 2015 (\$400.00), June (\$800.00) and to July 15 (\$400.00) as claimed, plus \$50.00 as recovery of the landlord's filing fee. The landlord is also entitled to retain the security deposit in partial satisfaction of the award.

Conclusion

Pursuant to Section 55 of the Residential Tenancy Act, I issue an Order of Possession, effective 48 hours following service upon the tenant. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The tenant's security deposit totals \$400.00. I order, pursuant to section 38(1)(d) of the Residential Tenancy Act that the full amount of the deposit be retained, in partial satisfaction of the monetary award of \$1,650.00 due to the landlord by the tenant. I further order that the remaining balance due to the landlord, equalling \$1,250.00, be paid immediately by the tenant to the landlord.

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: July 08, 2015

Residential Tenancy Branch

