



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application: CNR
Landlord's application: MND, MNR, MNSD, MNDC, FF

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The tenant applied to cancel a 10 day Notice to End Tenancy for unpaid rent. The landlord applied for an order for possession, a monetary award and an order to retain the security deposit. The applications were heard by conference call. The tenant and the landlord's representative called in and participated in the hearing. On July 14, 2015 the tenant filed his application to dispute a 10 day Notice to End Tenancy for unpaid rent. The landlord was served with the tenant's application. On July 18, 2015 the landlord filed his application for dispute resolution seeking an order for possession and a monetary order for unpaid rent. The landlord served the application, Notice of Hearing and documentary evidence by registered mail sent on July 16, 2015. At the hearing the tenant denied receiving the landlord's application or any notification of it. The Canada Post information with respect to the mailing stated that Delivery of the item was attempted on July 17, 2015 and a Notice card was left indicating where the item could be picked up. A second notice was delivered on July 22, 2015. The notice advised the tenant that the item would be available for pick up for 10 days, after which it would be returned to the sender. I find that the tenant's evidence that he was not notified of the landlord's application is not credible; I find that he chose to ignore the registered mail notifications and that he is deemed to have been served with the application and Notice of Hearing on the fifth day after it was mailed.

Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled?
Is the landlord entitled to an order for possession?
Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The landlord's representative at the hearing is not named in the landlord's application but he is named as one of the landlords on the tenancy agreement and he testified that he is a co-owner of the rental property. The named landlord was not available to attend the hearing. The landlord's representative testified that the tenancy began on January 1, 2015. The monthly rent is \$850.00, payable on the first of each month. The tenant paid a \$425.00 security deposit at the beginning of the tenancy.

The landlord's representative said that the tenant failed to pay the full amount of rent due for May. He paid \$680.00, leaving \$170.00 unpaid. The landlord's representative testified that no rent was paid for June or for July and on July 6, 2015 the landlord served a 10 day Notice to End Tenancy for unpaid rent. The Notice stated that the tenant had failed to pay rent in the amount of \$1,870.00 that was due on July 1, 2015.

The landlord's representative testified that on July 29, 2015 the landlord received a payment from the Provincial Government as part of a social assistance benefit in the amount of \$590.00. The payment was applied to the outstanding rent. The landlord's representative said that the landlord has not received any further payments and August rent has not been paid. According to the landlord, including August rent, the sum of \$2,130.00 is now due.

The landlord's representative said that the tenant became aggressive toward the landlord after he served the tenant with a Notice to End Tenancy and the police were called and since then the tenant has avoided communications and has not made any further rent payments. The landlord's representative requested an order for possession.

The tenant testified that he has made payments of rent to the landlord in cash and has never been given receipts. He acknowledged at the hearing that he has not made any payments to the landlord since June, apart from a payment from Social Services made on his behalf in July. The tenant did not provide any documents or records to show what amounts he claimed to have paid and he could not recollect the specifics of the dates and amounts paid. The tenant was not at home at the time of the hearing. He said that he had recorded the payments on a calendar at home. The tenant said that he had been working to catch up on arrears of rent when he made payments in June. He claimed that he was nearly caught up before July. The tenant said that he estimated that he owed the landlord \$1,200.00, inclusive of August rent. The tenant said that he was looking for other accommodation and he would agree to move out of the rental unit by the end of August.

The landlord's representative disagreed with the tenant's testimony with respect to rent payments and submitted that the landlord's figures were accurate. The landlord's representative did not have personal dealings with the tenant and the landlord, who was not present, provided him with the information concerning rent payments. He said that he could provide better particulars with respect to payments after the hearing.

The tenant was asked why he did not state in his application for dispute resolution that he disagreed with the amount claimed by the landlord to be due, in the 10 day Notice to End Tenancy. The tenant said that he did not make a specific objection because he was unfamiliar with the process. In his application for dispute resolution the tenant said:

The house at above address (address) victoria B.C. has bed bugs. when I notified Landlord I was given a 10 day notice to end tenancy the reason given was I am a month and a half behind in rent. The landlord was working with me to resolve the the late rent issue up until he was informed of the bed bug problem at this house. (reproduced as written)

Analysis

The tenant acknowledged at the hearing that he has not personally made any rent payments to the landlord since June. The landlord has acknowledged a payment of \$590.00 made on the tenant's behalf on July 29th. I accept and prefer the landlord's evidence as to rent payments and the amount outstanding over that of the tenant. I do so because the landlord's evidence as to payments is consistent with the amount stated on the 10 day Notice to End Tenancy. I find that it is unlikely that the tenant would not have mentioned in his application that he did not agree with the amount claimed by the landlord in the 10 day Notice to End Tenancy; instead, in his application he said the reason for the notice was because he was a month and a half behind in rent and said he was working to resolve the late rent issue. The failure of the tenant to provide any particulars of supposed payments and his inability to recall the dates or amounts of claimed payments causes me to prefer the landlord's evidence.

I find that the amount of rent outstanding, inclusive of August rent is the sum of \$2,130.00. I find that the landlord is entitled to a monetary award in the said amount. The landlord is entitled to recover the \$50.00 filing for his application, for a total award of \$2,180.00. I order that the landlord retain the \$425.00 security deposit in partial satisfaction of this award and I grant the landlord a monetary order under section 67 for the balance of \$1,755.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

The tenant has not provided grounds to establish that the Notice to End Tenancy should be cancelled and his application is dismissed. At the hearing the tenant said that he was prepared to move out on August 31st and the landlord accepted this proposal. I find that the landlord is entitled to an order for possession effective August 31st, 2015 after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that court.

Conclusion

The tenant's application to cancel the Notice to End Tenancy has been dismissed. The landlord has been granted a monetary order and an order for possession in the terms set out.

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: August 19, 2015

Residential Tenancy Branch

