



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Charles St. Holdings Ltd. and Dorset Realty Group Canada Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord's application: MNR, MNDC, MNSD, OPB, OPC, OPR

Tenant's Application: CNR, FF

Introduction

This was a hearing with respect to applications by the landlord and by the tenant. The hearing was conducted by conference call. The landlord's representatives and the tenant called in and participated in the hearing.

Issue(s) to be Decided

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

Background and Evidence

The rental unit is an apartment in Vancouver. The tenancy began in May, 2009. The current monthly rent is \$949.00. The tenant paid a security deposit of \$425.00 at the start of the tenancy.

There was an earlier dispute resolution proceeding with respect to this tenancy. The decision dated February 23, 2015 recorded a settlement agreement. The landlord was granted a monetary order in the amount of \$997.50 and an order for possession to be enforced if the monetary award was not paid by a specified date.

The landlord filed an application for dispute resolution on April 19th seeking a monetary award for unpaid rent and an order for possession.

The landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent. The Notice to End Tenancy was dated August 9, 2015. The Notice claimed that the tenant failed to pay rent of \$3,484.70 that was due on August 1st. The Notice to End Tenancy required the tenant to vacate the rental unit by August 20th. On August 13, 2015 the tenant applied to cancel the Notice to End Tenancy. He referred to the February 23, 2015 decision in his application. He said that he was supposed to pay \$997.50 on February 23, 2015 and the landlord would not accept the cash. The tenant claimed that this has been going on since February.

The landlord's representative testified that the landlord has received some payments from the tenant after February, but the last payment was received in May and there have been no payments made since then. He denied that the landlord is refusing to accept payments and he said that he has given the tenant a variety of means to contact him, but the tenant has made no effort to pay any amount since May. He said that there was still an amount due for prior months after the last payment in May and now rent is due for an additional four months. The landlord's representative said that he is seeking an award in the amount of \$3,484.70 as stated on the 10 day Notice to End Tenancy and is prepared to forego claims for additional rent for September. The landlord wants the tenant to move as soon as possible and requested an immediate order for possession.

The tenant acknowledged that he has not made any rent payment since May, but he maintained that the landlord has avoided him and ignored his efforts to pay, in particular he said the resident manager has avoided him. The landlord's representative disputed this testimony and referred to attempts to contact the tenant by e-mail. He said the tenant has his phone number and he would not have refused rent if it was offered. He said that he would have come to the rental unit to pick up the rent if the tenant had called him.

Analysis

In April, 2015 the landlord submitted an application for an order for possession and a monetary order. Since then the landlord has received some rent payments. The last payment was given in May. The landlord served the tenant with a 10 day Notice to End Tenancy dated August 9, 2015. The Notice to End Tenancy claimed that \$3,484.70 was due as current rent for August and arrears for past months. The tenant applied to dispute the Notice to End Tenancy. He referred to a dispute resolution in February and alleged that the landlord has refused to accept his rent payments. The payment ordered by the February 23rd arbitration decision was accepted by the landlord and at the hearing the tenant acknowledged that he has paid no rent since May. I do not

accept the tenant's testimony that the landlord has refused to accept his rent payments for the past four months. The landlord's representative testified at the hearing that he has given the tenant a variety of methods to contact him and said that he was ready to come to the rental unit to accept a rent payment from the tenant on short notice.

I find that rent has been unpaid since May and that there is no basis for cancelling the 10 day Notice to End Tenancy. The tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

Section 55 of the *Residential Tenancy Act* provides as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenant's application to dispute the landlord's Notice to End Tenancy. The landlord made an oral request for an order of possession at the hearing. Pursuant to section 55 I grant the landlord an order for possession effective two days after service upon the tenant. This order may be registered in the Supreme Court and enforced as an order of that court.

The landlord's application for a monetary award was filed in April, however, the tenant is aware that rent has not been paid since May and he received notice of the amount due when he was served with the 10 day Notice to End Tenancy. The landlord has abandoned any claim for unpaid rent for September. I therefore allow the landlord's claim for a monetary award in the amount of \$3,484.70. The landlord is entitled to recover the \$50.00 filing for its application for a total award of \$3,534.70. I order that the landlord retain the security deposit of \$425.00 in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$3,109.70. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The tenant's application has been dismissed without leave to reapply, The landlord has been granted an order for possession and a monetary order in the amount stated.

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: September 28, 2015

Residential Tenancy Branch

