



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Evergreen Place Apartments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, CNR, CNC, MNDC, FF

Introduction

This hearing dealt with two related applications. One was the landlord's application for an order of possession and a monetary order. The other was the tenant's application for orders setting aside a 1 Month Notice to End Tenancy for Cause, a 10 Day Notice to End Tenancy for Non-Payment of Rent, and a monetary order.

The hearing commenced at 9:00 am, as scheduled. When I asked if the tenant was on the line I did not hear a response. I then asked if the landlord was on the line and did receive a response. When I asked the landlord if when he called in he was told he was the only person on the line, he said yes.

The landlord then expressed his frustrations with the process and the delay between the time he filed his application and the date set for the hearing. We had some discussion about which applications were before me and the procedure that had been followed.

At about 9:07 I affirmed the landlord and started to hear his evidence on his application. After several minutes of testimony the tenant's advocate made her presence known. The tenant was with her. They said they were the first persons on the call; the tenant had responded affirmatively when I asked if he was present; and the advocate had been waiting for me to ask if there was anyone with the tenant. They also said they had heard the entire conversation between the landlord and me, as well as the landlord's testimony.

I apologized to the parties for the mix-up and re-started the hearing in my usual manner. I explained that in applications of this nature our rules of procedure required the landlord's evidence to be heard first; I had already started hearing his evidence; and I would finish hearing it before hearing the tenant. I explained the procedure I would be following in the hearing and answered all questions from the participants.

The first part of the hearing was interrupted several times by the landlord making calls to or receiving calls from the resident manager who was attempting to call into the hearing but was unable to get through. Finally, the witness was able to join the hearing at 9:28 am.

Ultimately, I heard the affirmed evidence of all the parties and the representations of the tenant's advocate.

Issue(s) to be Decided

- Is the 1 Month Notice to End Tenancy for Cause dated July 1, 2015 valid?
- Is the 10 Day Notice to End Tenancy for Non-Payment of rent dated August 2, 2015 valid?
- Is the tenant entitled to a monetary order and, if so, in what amount?
- Is the landlord entitled to a monetary order and, if so, in what amount?

Service of Documents

1 Month Notice to End Tenancy for Cause – The resident manager testified that he gave it to the tenant personally on July 1, 2015. The tenant testified that he found it posted to his door when he returned home from the mainland. He did not recall the date.

10 Day Notice to End Tenancy for Non-Payment of Rent – The resident manager testified that he posed the notice to the door of the rental unit on August 2, 2015. The tenant testified that he found it on the door upon his return from a trip, but could not say when that was.

Tenant's Application for Dispute Resolution dated July 9, 2015 and Amended Application for Dispute Resolution dated August 13, 2015 – The landlord acknowledged receipt of both documents.

Landlord's Application for Dispute Resolution dated August 10, 2015 – The resident manager testified that he posted it to the door of the rental unit. He was not sure when. The tenant testified that he did not find it and did not have a copy of it.

Background and Evidence

This one year fixed term tenancy commenced November 15, 2014. The monthly rent of \$575.00 is due on the first day of the month. The rent does not include hydro. A security deposit of \$287.50 was paid.

The tenant testified that he always paid his rent in cash. He testified that he paid the August rent by sliding the cash in an envelope under the office door. He followed that procedure because he was leaving early the next morning and he could not contact the resident manager. When he came home he found the 10 Day Notice to End Tenancy for Non-Payment of Rent taped to his door. He testified that he did not talk to the resident manager about the rent. Later in the hearing he testified that he asked the resident manager for a receipt for the August payment but the resident manager refused to give it to him, saying that he had not paid the August rent.

The owner and the resident manager both testified that all new tenants are told not to give any cash until they receive the receipt for the payment tendered. The resident manager testified

that the usual procedure is that a tenant will contact him when they want to pay the rent; he meets them at the office; and gives a receipt for the payment made right at that time.

The resident manager testified that the office is kept locked. In rebuttal evidence the tenant testified that this statement was not accurate as there was at least one occasion this summer when the office was left open for five days when the resident manager was away.

The tenant testified that he did not pay the September rent or make any attempt to pay the September rent because the landlord refused to give him a receipt for the August payment.

With regard to his claim for hydro in the amount of \$18.04 the tenant testified that the resident manager had put the tenant's name on the hydro account before he moved in and that BC Hydro charged him for power used in October. In order to ensure that there was no disruption in service he paid BC Hydro but says it was not his account. In support of his claim the tenant filed a Disconnection Notice dated February 13, 2015 for an amount of \$38.59 and proof of payment of that amount.

The owner testified that he had an invoice from BC Hydro for the period November 15, 2014 to January 2, 2015 in the amount of \$21.90. The invoice had been sent to him because the tenant had not put the account into his name. He contacted BC Hydro and told them the account was the tenant's responsibility. He did not file a copy of the invoice in his evidence.

Analysis

I accept the resident manager's testimony that he issued and posted the 10 Day Notice to End Tenancy for Non-Payment of Rent on August 2. Pursuant to section 90(c) the tenant is deemed to have received the notice on the third day after it was posted – August 5, 2015. The tenant had five days from the date the notice is deemed to have been received to dispute the notice. He did not dispute the notice until August 13, when he amended his application for dispute resolution. When he amended his application he did not include a request for an order extending the time in which to dispute the notice.

Section 46(5) provides that if a tenant who has received a 10 Day Notice to End Tenancy for Non-Payment of Rent and does not pay the rent or make an application disputing the notice within the time limit is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates by that date.

As the tenant did not dispute the 10 Day Notice to End Tenancy for Non-Payment of Rent within the five day time limit he is presumed to have accepted that the tenancy ended on the effective date of the notice.

Even if the tenant had filed his application on time I do not accept his evidence that he paid the August rent by sliding the money under the office door. His own testimony is that the office is

not secure so why would he leave cash in an unsecure setting? This is not a reasonable explanation.

Finally, the tenant withheld the September rent when he had no legal right to do so. (See section 267(1)). As of the date of the hearing the September rent was still in arrears.

The tenant's application for an order setting aside the 10 Day Notice to End Tenancy for Non-Payment of Rent is dismissed.

I accept the resident manager's testimony that he posted the landlord's application for dispute resolution on the door of the rental unit. Section 89(2) allows an landlord's application for an order of possession to be served in this manner.

In addition, Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the arbitrator must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession.

In either event, the landlord is entitled to an order of possession. As the September rent is unpaid the order will be effective two days after service on the tenant.

Although I heard evidence regarding the 1 Month Notice to End Tenancy for Cause a decision on the validity of that notice is not required as the tenancy has been ended pursuant to the 10 Day Notice to End Tenancy for Non-Payment of Rent. Accordingly, evidence on that point has not been included in this decision.

The tenant's claim for damages in the amount of \$2400.00, which is comprised of the rent he would have paid for the balance of the term of the tenancy, is dismissed. As explained to the tenant in the hearing when a fixed term tenancy is ended by the landlord for cause, such as non-payment of rent, the tenant has no right to compensation.

The tenant's claim for money paid by him to BC Hydro is also dismissed. The onus is on any party making a claim to prove their claim on a balance of probabilities. The only documentation filed by the tenant is the demand for arrears dated February 13, 2015. The document does not say when the charges were incurred; specifically whether they were before or after the start of the tenancy. The regular invoices would have shown this information as well as when the tenant's account was opened, the specific dates for hydro usage being charged to the tenant, and the payments made. The tenant's evidence does not meet the required standard of proof.

Although section 89 allows a landlord's claim for an order of possession to be posted to the door of the rental unit it does not allow a claim for a monetary order to be served in this manner. Accordingly, the landlord's claim for arrears of rent is dismissed, with leave to re-apply.

As the landlord was only partially successful no order will be made regarding the filing fee paid the landlord. The tenant did not pay a fee to file his application.

Conclusion

- a. An order of possession effective two days after service has been granted to the landlord. If necessary this order may be filed in the Supreme Court and enforced as an order of that court.
- b. The monetary claims of both parties have been dismissed, although the landlord's claim for arrears of rent has been dismissed with leave to re-apply.

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 17, 2015

Residential Tenancy Branch

