



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR MNR MNSD MNDC FF
For the tenant: CNR

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, to keep all or part of the tenant's security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated August 12, 2015.

The tenant, the landlord and an adult daughter of the landlord attended the teleconference hearing. The hearing process was explained to the parties and an opportunity to ask questions was provided. The parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

The parties confirmed that they received the documentary evidence from the other party prior to the hearing and that they had the opportunity to review the documentary evidence. I find the parties were served in accordance with the *Act*.

Preliminary and Procedural Matter

During the hearing, the landlord testified that a portion of his claim included the loss of October 2015 rent, which was premature as the date of the hearing was September 24, 2015. As a result, the landlord's claim for loss of October 2015 rent is dismissed with leave to reapply.

Issues to be Decided

- Should the 10 Day Notice dated August 12, 2015 be cancelled?
- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of their filing fee under the *Act*?

Background and Evidence

The parties agreed that a month to month tenancy began on March 1, 2015. Monthly rent in the amount of \$1,300 is due on the first day of each month. The tenant paid a security deposit of \$650 at the start of the tenancy, which the landlord continues to hold.

The landlord has claimed \$3,900 comprised of the following:

ITEM DESCRIPTION	AMOUNT
1. Unpaid rent for July 2015	\$1,300
2. Unpaid rent for August 2015	\$1,300
3. Loss of September 2015 rent	\$1,300
TOTAL	\$3,900

The tenant confirmed that he paid no rent for the months of July, August or September 2015 and that he continues to occupy the rental unit. The tenant stated that he did not pay rent due to a flood that occurred in June 2015. The tenant submitted photos of the condition of the rental unit, which the landlord did not dispute.

A copy of the 10 Day Notice was submitted in evidence and is dated August 12, 2015. The 10 Day Notice indicates that \$2,600 was owed as of July 1, 2015; however, the parties agreed that the amount of \$2,600 was actually owed as of August 1, 2015. Both the parties indicated that they knew that July 1, 2015 should have read August 1, 2015 and was assumed to have been August 1, 2015. The parties agreed that the amount of \$2,600 was comprised of \$1,300 for July 2015 rent, and \$1,300 for August 2015 rent. The effective vacancy date listed on the 10 Day Notice is August 22, 2015. The tenant confirmed he received the 10 Day Notice on August 12, 2015 and disputed it on August 17, 2015, which is within the 5 day timeline provided for under section 46 of the *Act*.

The landlord requested an order of possession, however, was willing to agree to have the order of possession effective as of September 30, 2015 at 1:00 p.m., as the tenant indicated that he would attempt to pay at least \$1,300 within one week to the landlord towards unpaid rent.

The tenant confirmed that he has not applied for a rent reduction yet or to end the tenancy early due to the flood, and confirmed that he has continued to live in the rental unit.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

10 Day Notice - As the tenant disputed a 10 Day Notice the tenant has the burden of proof to prove that rent was paid as required pursuant to the tenancy agreement. I find the tenant has provided insufficient evidence to prove that rent was paid in full. Section 26 of the *Act* requires that tenant pay the rent by the date it is due in accordance with the tenancy agreement, even if the landlord has not complied with the *Act* unless the tenant has a right under the *Act* to deduct all or a portion of rent. Given the above, I find the tenant did not have any rights under the *Act* to deduct all or a portion of rent as the tenant failed to make an application for a rent reduction or to end the tenancy early due to the flood in the rental unit. I make no findings as to the cause of the flood in June 2015. Given the above, I dismiss the tenant's application to cancel the 10 Day Notice due to insufficient evidence as the tenant admitted to not paying July, August and September 2015 rent. I find the 10 Day Notice to be valid and I uphold the 10 Day Notice dated August 12, 2015.

Order of Possession - Pursuant to section 55 of the *Act*, I must grant the landlord an order of possession once I have dismissed the tenant's application to cancel the 10 Day Notice. Therefore, I grant the landlord an order of possession **effective September 30, 2015 at 1:00 p.m.**, the date requested by the landlord. I find the tenancy ended on August 22, 2015, effective vacancy date listed on the 10 Day Notice, and that the tenant has been overholding in the rental unit ever since.

Claim for unpaid rent/loss of rent – Consistent with my findings above, that the tenant provided insufficient evidence to prove that rent was paid as claimed by the landlord, I find that the tenant owe \$3,900, comprised of the unpaid rent of \$1,300 for July 2015, \$1,300 for August 2015, and loss of \$1,300 rent for September 2015. I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. The tenant continues to occupy the rental unit. The landlord will not regain possession of the unit until after service of the order of possession.

As the landlord has succeeded with their application, I grant the landlord the recovery of their **\$50** filing fee.

Monetary Order – I find the landlord has established a total monetary claim of **\$3,950**, comprised of \$3,900 in unpaid rent and loss of rent, plus the \$50 filing fee.

I ORDER the landlord to retain the tenant's full security deposit of \$650 in partial satisfaction of the landlord's monetary claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$3,300**. This order is made in accordance with section 72 of the *Act*.

Conclusion

The tenant's application is dismissed due to insufficient evidence.

The landlord's application is successful.

The landlord has been granted an order of possession effective September 30, 2015 at 1:00 p.m. The tenant must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has proven a monetary claim of \$3,950 and has been ordered to retain the tenant's full \$650 security deposit in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order for the balance owing by the tenant to the landlord in the amount of \$3,300. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 24, 2015

Residential Tenancy Branch

