



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, CNC, LRE, MNDC, MNR, and FF

Introduction

These proceedings were the subject of a dispute resolution hearing on September 09, 2015 before another Arbitrator who was unable to preside over the hearing on October 06, 2015 due to urgent personal matters.

At the hearing on September 09, 2015 the original Arbitrator considered, and granted, the Tenant's application for an adjournment. The Arbitrator issued an interim decision regarding her decision to grant an adjournment. In her interim decision she also granted permission to the Landlord to amend the Landlord's Application for Dispute Resolution to include a claim for unpaid rent.

At the outset of the hearing on October 06, 2015 the parties were advised that the original Arbitrator was unable to preside over the hearing on October 06, 2015 and both parties indicated they had no concerns with proceeding in the absence of the original Arbitrator. As the original Arbitrator does not appear to have made any findings in regards to the merits of either Application for Dispute Resolution, I find it appropriate and reasonable for me to adjudicate these matters.

The hearing on October 06, 2015 dealt with cross applications between the parties.

On July 07, 2015 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause, for an Order suspending or setting conditions on the Landlord's right to enter the rental unit; and for a monetary Order in the amount of \$20,000.00.

The Agent for the Tenant stated that he believes the Application for Dispute Resolution was served to the Landlord, via registered mail, on July 08, 2015. The Agent for the Landlord stated that the Landlord received the Tenant's Application for Dispute Resolution sometime in September of 2015, via fax. In the interim decision of September 09, 2015 the Agent for the Landlord acknowledged receipt of these documents and I therefore find that these documents have been received by the Landlord and that the Landlord has had ample time to consider them.

On July 17, 2015 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Cause and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. The Agent for the Landlord stated that the

Landlord's Application for Dispute Resolution, the Notice of Hearing, and 19 pages of evidence the Landlord submitted to the Residential Tenancy Branch on July 22, 2015 were served to the Tenant, via registered mail, on July 21, 2015. The Landlord submitted Canada Post documentation that corroborates this testimony.

The Agent for the Tenant stated that he does not recall how the Application for Dispute Resolution, the Notice of Hearing, and 19 pages of evidence the Landlord submitted to the Residential Tenancy Branch were served to the Tenant. He acknowledges that evidence was served to the Tenant by the Landlord prior to the hearing on September 09, 2015 but he does not know which specific documents were served as the Tenant did not provide him with a copy of the evidence package.

On the basis of the testimony of the Agent for the Landlord and in the absence of evidence to the contrary, I find that the 19 pages of evidence the Landlord submitted to the Residential Tenancy Branch on July 22, 2015 were served to the Tenant in accordance with section 88 of the *Residential Tenancy Act (Act)*. These documents were accepted as evidence for these proceedings.

On September 04, 2015 the Tenant submitted 4 pages to the Residential Tenancy Branch and on September 08, 2015 the Tenant submitted a duplicate of 2 of those pages. The Agent for the Tenant stated that these documents were submitted in support of the Tenant's application for adjournment and he does believe these documents were served to the Landlord. The Agent for the Landlord acknowledged receipt of these documents, although she does not recall when the documents were received.

The documents submitted by the Tenant on September 04, 2015 were considered by the Arbitrator who granted the Tenant's application for an adjournment. As the documents were not submitted as evidence in support of the Tenant's Application for Dispute Resolution or in response to the Landlord's Application for Dispute Resolution, they were not considered by me during this adjudication.

On September 11, 2015 the Landlord submitted an amended Application for Dispute Resolution and two 4 pages of evidence to the Residential Tenancy Branch. In the amended Application for Dispute Resolution the Landlord included a claim for unpaid rent, in the amount of \$1,950.00. The Agent for the Landlord stated that these documents were sent to the Tenant's service address, via registered mail, on September 11, 2015. The Landlord submitted Canada Post documentation that corroborates this testimony.

The Agent for the Tenant stated that the Tenant is still residing at the Tenant's service address; that the Tenant does not regularly communicate with him; that it is possible that the Tenant received the documents that were mailed on September 11, 2015; and that the Tenant has not provided him with a copy of those documents.

On the basis of the evidence of the Landlord and in the absence of evidence to the contrary, I find that the documents submitted to the Residential Tenancy Branch on September 11, 2015 were mailed to the Tenant on September 11, 2015. I therefore find that they have been deemed served to the Tenant, in accordance with sections 89 and 90 of the *Act*. They were accepted as evidence for these proceedings and I find they serve to amend the Landlord's Application to include a claim for unpaid rent.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession or should the Notice to End tenancy for Cause be set aside?

Is there a need to issue an Order suspending or setting conditions on the Landlord's right to enter the rental unit?

Is the Tenant entitled to compensation a breach of his right to quiet enjoyment?

Is the Landlord entitled to compensation for unpaid rent?

Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began on October 01, 2014;
- the rent at the end of the tenancy was/is \$650.00;
- the rent is due by the first day of each month; and
- a One Month Notice to End Tenancy was personally served to the Tenant on July 02, 2015.

The Agent for the Tenant stated that:

- he does not know when this tenancy began;
- the rent at the end of the tenancy was/is \$650.00;
- the rent is due by the first day of each month; and
- a One Month Notice to End Tenancy was personally served to the Tenant sometime prior to July 07, 2015.

The Landlord and the Tenant agree that the One Month Notice to End Tenancy for Cause that is the subject of these proceedings declared that the Tenant must vacate the rental unit by August 31, 2015.

The Landlord and the Tenant agree that the One Month Notice to End Tenancy for Cause that is the subject of these proceedings declared that the Landlord is ending the tenancy because the Tenant is repeatedly late paying rent.

In support of the One Month Notice to End Tenancy the Agent for the Landlord stated that:

- the Tenant did not pay rent for March until March 30, 2015;
- the Tenant did not pay full rent for May until May 19, 2015;
- the Tenant did not pay rent for June until June 02, 2015; and
- the Tenant did not pay rent for July until July 02, 2015.

The Agent for the Tenant acknowledged that full rent was not paid when it was due in March and July of 2015. He stated that he does not know if rent was paid on time in May and June of 2015.

In support of the application for unpaid rent the Agent for the Landlord stated that rent has not been paid for August, September, or October of 2015. The Agent for the Tenant does not dispute this testimony.

The Agent for the Tenant stated that the Tenant is seeking an Order suspending or setting conditions on the Landlord's right to enter the rental unit because the Landlord entered his rental unit without lawful authority in March of 2015. He stated that the Tenant told him that sometime in March the "Landlord", whom the Agent for the Tenant presumes is the person named as a Respondent in the Tenant's Application for Dispute Resolution, knocked on the Tenant's door and walked into the rental unit without waiting for a response. He stated that he has no direct knowledge of this incident and he does not know why the Landlord entered the room.

The Agent for the Landlord stated that she has no knowledge of this incident and the Landlord did not discuss the allegation with her.

The Agent for the Tenant stated that the Tenant is seeking compensation, in the amount of \$20,000.00, in part, because his right to quiet enjoyment was breached when the rental unit was entered in March of 2015 and, in part, because the Landlord refuses to acknowledge a \$500.00 rent payment that was made in March of 2015. He stated that he has no direct knowledge of the alleged \$500.00 payment but the Tenant told him he made a \$500.00 cash payment in March which the Landlord is refusing to acknowledge.

The Agent for the Landlord stated that a \$500.00 cash payment was not made in March of 2015. She stated that there was a \$1,300.00 payment made on March 30, 2015 which was applied to unpaid rent for March and April of 2015.

Analysis

Section 47(1)(b) of the *Act* authorizes a landlord to end a tenancy by providing proper written notice if a tenant is repeatedly late paying rent. Residential Tenancy Policy Guideline #38 stipulates that three late payments are the minimum number sufficient to justify a notice to end tenancy pursuant to section 47(1)(b) of the *Act*, and I concur with this guideline.

On the basis of the testimony of the Agent for the Landlord and in the absence of evidence to the contrary, I find that a One Month Notice to End Tenancy for Cause, which has a declared effective date of August 31, 2015, was personally served to the Tenant on July 02, 2015.

On the basis of the undisputed evidence, I find that the Tenant did not pay rent when it was due in March, May, June, and July of 2015. I therefore find that the Landlord had grounds to end this tenancy, pursuant to section 47(1)(b) of the *Act*, when the Notice to End Tenancy was served on July 02, 2015. I therefore grant the Landlord's application for an Order of Possession and I dismiss the Tenant's application to set aside the One Month Notice to End Tenancy for Cause.

Section 47(2) of the *Act* stipulates that a One Month Notice to End Tenancy for Cause must end the tenancy effective on a date that is not earlier than one month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. As the Tenant received this Notice on July 02, 2015 and rent is due by the first of each month, the earliest effective date that the Notice is September 30, 2015.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was September 30, 2015.

On the basis of the undisputed evidence, I find that during the latter portion of this tenancy the Tenant agreed to pay monthly rent of \$650.00 by the first day of each month. On the basis of the undisputed evidence, I find that the Tenant has not paid rent for August or September of 2015. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,300.00 in outstanding rent to the Landlord.

As the Tenant did not vacate the rental unit on September 30, 2015, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. I find that the Tenant must compensate the Landlord for the six days in October that he has remained in possession of the rental unit, at a daily rate of \$20.97, which equates to \$128.82.

I dismiss the Landlord's claim for unpaid rent for any period after October 06, 2015, as it is entirely possible the Tenant will vacate the rental unit today and the Landlord has not applied for compensation for lost revenue. The Landlord retains the right to file another application for unpaid rent for any period after October 06, 2015 if the unit is not vacated today.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to \$50.00 in compensation for the fee paid to file this Application.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord entered the rental unit in a manner that does not comply with 29 of the *Act*. I therefore find that the Tenant has failed to establish there is a need to suspend or set conditions on the Landlord's right to enter the rental unit suspend or set conditions on the Landlord's right to enter the rental unit.

In determining that the Tenant submitted insufficient evidence to establish that the Landlord entered the rental unit in a manner that does not comply with 29 of the *Act*, I was heavily influenced by the absence of written or oral evidence from the Tenant regarding this allegation.

I find that the Tenant submitted insufficient evidence to establish that a cash payment of \$500.00 was made in March of 2015. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's claim or that refutes the Agent for the Landlord's testimony that the payment was not made.

I find the testimony of the Agent for the Tenant, who is simply reiterating limited details provided to him by the Tenant regarding the alleged payment of \$500.00 and the alleged unlawful entry, is insufficient in these circumstances, as his testimony is subject to the many frailties of hearsay evidence.

As the Tenant has failed to establish that the Landlord entered the rental unit in a manner that does not comply with 29 of the *Act* or that the Landlord has failed to acknowledge a \$500.00 cash payment, I dismiss the Tenant's claim for a monetary Order.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim of \$1,478.82, which is comprised of \$1,428.82 in unpaid rent and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court, and enforced as an Order of that Court.

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: October 06, 2015

Residential Tenancy Branch

