



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FAN TOWER SOUTH INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *OPC, CNC MNDC, MNR, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The tenant applied for an order to cancel the notice to end tenancy and for an order for compensation for loss under the *Act*.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

The parties had attended a hearing on August 13, 2015, to resolve a dispute between them. The tenant had made application for a monetary order for compensation and was successful in his application. Since the tenant has already been awarded his claim for compensation at the earlier hearing, during the hearing today on November 04, 2015, the tenant withdrew the portion of his application that dealt with his monetary claim for compensation.

Prior to this hearing, the tenant filed the order that was awarded to him following the hearing on August 13, 2015, in the Small Claims Court and had amended the amount of the award to include rent for October. The landlord's application being heard today includes a monetary order for rent for October.

Section 58.2.c of *Residential Tenancy Act* addresses the jurisdiction of the *Residential Tenancy Act*. This section states that if a dispute is linked substantially to a Small Claims Court action, then the arbitrator may decline jurisdiction.

Based on the sworn testimony of both parties and the documentary evidence filed by both parties, I find that the portion regarding rent for October is linked substantially to a matter that is before the Small Claims Court of BC. Therefore I find that I do not have jurisdiction to address the landlord's claim for rent for October 2015.

Accordingly, this hearing only dealt with the landlord's application for an order of possession and for the recovery of the filing fee. It also dealt with the tenant's application to set aside the notice to end tenancy.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Was the tenant repeatedly late paying rent?

Background and Evidence

The tenancy began on April 01, 2011. The rent is \$750.00 due on the first of the month. Pursuant to a decision that followed the hearing on August 13, 2015, the tenant's rent was reduced to \$200.00 per month, until the landlord completed the required repairs.

On September 17, 2015, the landlord served the tenant with a notice to end tenancy for cause. The tenant disputed the notice in a timely manner. The notice to end tenancy was served for the following reason:

- Tenant is repeatedly late paying rent

The landlord stated that the tenant is consistently late on rent and filed receipts to verify the dates that the tenant paid rent. The receipts filed into evidence are receipts for rent paid for the period of August 2014 to August 2015. The tenant agreed that the dates on the receipts are correct but stated that he was late when there was a long weekend or when the agent who collected his rent went away on vacation. The dates on the receipts range from the 2nd of the month to the 12th of the month.

For the period of August 2014 to August 2015, the tenant has paid rent on time only for the months of December 2014 and May 2015. For this period the tenant was late on rent ten times. The landlord filed copies of the notices to end tenancy, served on the tenant for nonpayment of rent. For this period, the landlord served the tenant with six notices to end tenancy for rent not paid on the day it was due.

Analysis

In order to support the notice to end tenancy, the landlord must prove that the reason for the notice to end tenancy applies.

Pursuant to section 38 of the *Residential Tenancy Policy Guideline*, three late payments are the minimum number sufficient to justify a notice under these provisions.

For the period of August 2014 to August 2015, the rent receipts filed into evidence indicate that the tenant was late paying rent on ten occasions. The testimony of both parties confirms that the tenant was repeatedly late paying rent. Therefore, I find that the landlord has proven the reason to end the tenancy for cause and accordingly, I uphold the notice to end tenancy.

Pursuant to section 55(2) I am issuing a formal order of possession effective on or before 1:00 pm on December 01, 2015. The Order may be filed in the Supreme Court for enforcement.

Since the landlord has proven his case, I award him the recovery of the filing fee of \$50.00. I grant the landlord a monetary order under section 67 of the *Residential Tenancy Act*, for \$50.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective on or before 1:00 p.m. on December 01, 2015. I also award the landlord a monetary order in the amount of \$50.00.

The tenant's application is dismissed in its entirety.

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: November 04, 2015

Residential Tenancy Branch

