



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LANDLORD: OPR, MNR, MNSD, MNDC, FF
TENANT: CNR, FF

Introduction

This matter dealt with an application by both the Landlords and the Tenant.

The Landlord has applied for an Order of Possession, for compensation for unpaid rent, for compensation loss or damage under the Act, regulations or tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee.

The Tenant has applied to cancel the Notice to End Tenancy and to recover the filing fee.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by personal delivery on November 13, 2015 as required by s. 89 of the Act.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on December 15, 2015 which does not comply with s. 89 of the Act as the Tenant received the hearing package on October 27, 2015 and the Act requires service of the application within 3 days of receiving the hearing package. The Landlord said he received the Tenant's hearing package and the hearing continued.

Issues(s) to be Decided

Landlord:

1. Does the Landlord have grounds to end the tenancy?
2. Is there unpaid rent?
3. Is the Landlord entitled to retain the Tenant's security deposit?
4. Is there a loss or damage to the Landlord and if so how much?

Tenant:

1. Is the Tenant entitled to an order cancelling the Notice to End Tenancy?

Background and Evidence

This tenancy started on July 1, 2015 as a month to month tenancy. Rent is \$475.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$237.50 at the start of the tenancy.

The Landlord said he issued a 10 Day Notice to End Tenancy for unpaid rent dated October 2, 2015 by personal delivery to the Tenant on October 3, 2015. The Notice to End Tenancy has an effective vacancy date of October 13, 2015. The Landlord continued to say he issued the Notice to End Tenancy because the Tenant has unpaid rent for October, 2015 of \$281.00, November, 2015 of \$475.00 and December, 2015 of \$475.00. The Landlord said the Tenant has unpaid rent in a total amount of \$1,231.00.

The Tenant agreed that he has unpaid rent in the amount of \$1,231.00. The Tenant continued to say he will be receiving some money in the near future and he will be able to pay all the unpaid rent if the Landlord is willing to continue the tenancy. The Landlord said they do not want to continue the tenancy and requested an Order of Possession for as soon as possible.

The Tenant was told by the Arbitrator that he filed his application 15 days after the time limit for filing an application as stated in the Act and on page two of the 10 Day Notice to End Tenancy for unpaid rent. As well page 2 of the Notice and section 46(5) of the Act says if the Tenant does not file within 5 days of receiving the Notice to End Tenancy the Tenant is presumed to have accepted the tenancy ending on the effective vacancy date, which in this situation is October 13, 2015.

The Tenant said he made the application late to dispute the Notice to End Tenancy, but he would like to continue the tenancy. The Tenant said he is getting money soon and will pay all the unpaid rent.

The Landlord said he did not want to continue the tenancy and the Landlord requested and Order of Possession for as soon as possible.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent, a Tenant may apply for dispute resolution. If the Tenant fails to do this, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy on the day it was served, or on October 3, 2015. Consequently, the Tenant would have had to apply to dispute the Notice by October 8, 2015.

I find that the Tenant applied to dispute the Notice to End Tenancy on October 23, 2015 which is 15 days after the time limit to apply for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

Further, section 26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has the right under this Act to deduct all or a portion of the rent.

I find the Tenant does not have the right to withhold the rent payments therefore I find for the Landlord and I order the Landlord to recover the unpaid rent in the amount of \$1,231.00 and the filing fee of \$50.00 for this proceeding from the Tenant. I order the Landlord to retain the Tenant's security deposit of \$237.50 and I have issued a monetary order for \$1,043.50 to the Landlord.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,043.50 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: December 22, 2015

Residential Tenancy Branch

