



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, CNR, MNR, MNDC, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on December 15, 2015 he personally served the Tenant with the Application for Dispute Resolution and the Notice of Hearing. The Tenant acknowledged receipt of these documents.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and to cancel a Notice to End Tenancy for Unpaid Rent.

The Tenant stated that he personally served the Landlord with the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted with the Application for Dispute Resolution although he cannot recall the date of service. The Landlord acknowledged receipt of these documents and the evidence submitted was accepted as evidence for these proceedings.

The parties 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 Unpaid Rent be set aside?

Is the Landlord entitled to a monetary Order for unpaid rent?

Is the Tenant entitled to a rent refund?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began at least four years ago;

- when the tenancy began the Tenant agreed to pay monthly rent of \$600.00 by the first day of each month; and
- the parties did not sign a tenancy agreement.

The Tenant stated that approximately three years ago he and the Landlord verbally agreed that the rent could be paid by the 15th day of each month. The Tenant stated that he paid \$300.00 to the Landlord in exchange for the Landlord agreeing to change the due date of the rent, although has been unable to locate a copy of the cheque he used to make that payment. The Tenant is seeking to recover the \$300.00 he paid to change the due date.

The Landlord stated that he did not agree to change the due date of the rent and that the Tenant did not pay \$300.00 to change the date rent was due.

The Landlord and the Tenant agree that they verbally agreed to increase the rent from \$600.00 to \$650.00, although neither party can recall when the rent increase took effect. The Tenant submitted a rent cheque for \$650.00, dated April 30, 2015, and a rent cheque for \$600.00, dated April 01, 2015. After discussing these cheques the parties agreed that the rent increase likely took effect on May 01, 2015.

The Landlord and the Tenant agree that no rent was paid for December of 2015, January of 2016, or February of 2016. The Landlord stated that his claim for unpaid rent of \$1,950.00 included a claim for unpaid rent/lost revenue for January and February of 2016, as he knew the hearing would be scheduled for some time in February.

The Landlord and the Tenant agree that the Landlord personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent on December 09, 2015, which declared that the Tenant must vacate the rental unit by December 20, 2015.

At the conclusion of the hearing the Tenant challenged the Landlord's right to serve a Notice to End Tenancy. He stated that he has previously been served with a Notice to End Tenancy that names the Landlord's wife as the landlord so he is not certain the Landlord named on Application for Dispute Resolution is actually his landlord.

Analysis

On the basis of the undisputed evidence I find that the Landlord and the Tenant entered into an oral tenancy agreement which required the Tenant to pay monthly rent of \$600.00 by the first day of each month.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord agreed to change the due date of the rent. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's submission that the Landlord agreed to change the due date or that refutes the Landlord's submission that he did not agree to change the due date. I therefore find that the rent remained due by the first day of each month.

I find that the Tenant has submitted insufficient evidence to establish that he paid \$300.00 to the Landlord in exchange for him agreeing to change the due date of the rent. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's submission that he paid \$300.00 to the Landlord or that refutes the Landlord's submission that this payment was not made. As the Tenant has failed to establish this \$300.00 was paid, I dismiss his claim to recover this payment.

Section 43(1)(a) of the *Act* stipulates that a landlord may impose a rent increase only up to an amount that is calculated in accordance with the Residential Tenancy Regulation. The authorized rent increase for 2015 was 2.5%. As the \$50.00 rent increase the Landlord imposed in 2015 was approximately 8.3%, I find that the rent increase does not comply with section 43(1)(a) of the *Act*.

Section 43(1)(b) of the *Act* stipulates that a landlord may impose a rent increase only up to an amount that has been ordered by the director. As there is no evidence that the director authorized the Landlord to increase the rent by \$50.00, I find that the rent increase does not comply with section 43(1)(b) of the *Act*.

Section 43(1)(c) of the *Act* stipulates that a landlord may impose a rent increase only up to an amount that has been agreed to by the tenant in writing. As there is no evidence that the Tenant agreed in writing to increase the rent by \$50.00, I find that the rent increase does not comply with section 43(1)(c) of the *Act*.

On the basis of the undisputed evidence, I accept that the Landlord collected the rent increase of \$50.00 for May, June, July, August, September, October, and November of 2015, which is \$350.00. Section 43(5) of the *Act* stipulates that if a landlord collects a rent increase that does not comply with the legislation a tenant may deduct the rent or otherwise recover the increase. I therefore find that the Tenant had the right to recover this rent overpayment, pursuant to section 43(5) of the *Act*, by reducing his rent payment for December of 2015 by \$350.00.

As the Tenant was required to pay rent of \$600.00 by December 01, 2015, less the \$350.00 rent "overpayment", I find that he was obligated to pay \$250.00 to the Landlord on December 01, 2015. As the Tenant is required to pay rent when it is due, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$250.00 in rent for December of 2015.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within ten days, by providing proper written notice. On the basis of the undisputed evidence, I find that the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was personally served to the Tenant on December 09, 2015.

As the Tenant did not pay all of the rent that was due on December 01, 2015 and he was served with a valid Ten Day Notice to End Tenancy, I find that the tenancy ended on December 20, 2015 in accordance with the Ten Day Notice to End Tenancy. I therefore grant the Landlord's application for an Order of Possession and I dismiss the Tenant's application to set aside the Notice to End Tenancy.

As the Tenant did not vacate the rental unit on December 20, 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. As the Tenant has already been ordered to pay rent for the period between December 20, 2015 and December 31, 2015, I find that the Landlord has been fully compensated for that period.

I find that the Tenant must also pay rent for January of 2016, in the amount of \$600.00, as the Tenant remained in possession of the rental unit for that month.

As the Landlord is seeking a monetary Order for rent for February of 2016 and the Tenant has not yet vacated the rental unit, I will grant the claim for \$600.00 in rent for February of 2016 and make the Order of Possession effective on February 29, 2016.

Given that the Landlord named on the Application for Dispute Resolution collected rent from the Tenant and he communicated with the Tenant in regards to the rent increase, I am satisfied that he was either the actual landlord or he had authority to act on behalf of the landlord. I therefore place no weight on the Tenant's submission that the Landlord did not have the right to serve him with a Notice to End Tenancy.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on February 29, 2016. 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, in the amount of \$1,500.00, which is comprised of \$1,450.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$1,500.00. In the event the Tenant does not 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: February 02, 2016

Residential Tenancy Branch

