



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING ADVISORY ASSOCIATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF, CNR, MNDC, RR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;

Both parties attended the hearing by conference call and confirmed receipt of the notice of hearing package(s) served by the other party. The landlord confirmed receipt of the tenant's submitted documentary evidence. The tenant has confirmed receipt of the landlord's submitted documentary evidence.

Preliminary Issue(s)

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that the tenant has applied for a monetary order for money owed or compensation for damage or loss and authorization to reduce rent for services, facilities agreed upon but not provided. As these sections of the tenant’s application are unrelated to the main section which is to cancel the notice to end tenancy issued for unpaid rent, I dismiss these sections of the tenant’s claim with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Is the tenant entitled to an order cancelling the notice to end tenancy?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant’s claim and the landlord’s cross claim and my findings around each are set out below.

This tenancy began on December 21, 2015 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated December 21, 2015. The monthly rent is \$580.00 payable on the 1st day of each month and a security deposit of \$290.00 was paid on December 21, 2015.

The landlord stated that the tenant was served with the 10 Day Notice dated February 3, 2016 in person on February 3, 2016. The landlord has provided a copy of a proof of service statement dated February 3, 2016 as confirmation of service in this manner. The 10 Day Notice states that the tenant failed to pay rent of \$580.00 that was due on February 1, 2016 and an effective end of tenancy date of February 13, 2016. The tenant confirmed in his direct testimony receipt of the 10 Day Notice.

The landlord stated that the tenant failed to pay any rent since the 10 Day Notice was served on February 3, 2016 and seeks an order of possession for unpaid rent and a monetary order for unpaid rent of \$1,160.00 (Unpaid February and March Rent).

The tenant acknowledged that no rent has been paid to the landlord since the 10 Day Notice dated February 3, 2016 was served, however the tenant claims that he has tried to pay the landlord the rent through cash, debit and direct payment. The tenant clarified that he had

attempted to pay rent in cash, but that the landlord had refused and would only accept payment by cheque or money order.

The landlord clarified that rent was not refused, but that cash payments are not accepted on site as posted on the Property Managers' door as shown in the tenant's submitted photograph. The landlord referred to clause #9 of the signed tenancy agreement which states,

PAYMENT OF RENT. The tenant must pay the rent on time, unless the Tenant is permitted under the Act to deduct from the rent. If the rent is unpaid, the Landlord may issue a Notice to End Tenancy, which may take effect not earlier than 10 days after the date the Tenant receives the notice. The landlord must not take away or make a tenant pay extra for a service or facility that is already included in the rent, unless a reduction is made under Section 27(2) of the Act. The Landlord must give the Tenant a receipt for rent paid in cash...

All cash payments must be made at the landlord's head office in New Westminster during regular business hours.

The tenant stated that he was not aware of this section of the agreement when he signed it.

The landlord stated that the tenant was informed onsite by staff that cash payments cannot be accepted and for the tenant to attend with the cash at the head office.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

Based upon the undisputed evidence of both parties I find that the tenant did not pay his rent when it was due or within the five days provided for pursuant to section 46. The tenant's claim that he attempted to pay rent in cash within the allowed time frame is not disputed. However, the landlord's policy of not accepting cash at the rental property is clear as it is posted on the Property Manager's Office Door as shown on the tenant's submitted photograph, which is not disputed by either party. The landlord has allowed for cash payments to be made at their head office as stipulated in clause #9.

The tenant does not dispute that he has not paid his rent.

The tenant is not entitled to have the 10 Day Notice dated February 3, 2016 cancelled and I find that the landlord is entitled to a two-day order of possession.

I find that the landlord has proven that the tenant failed to pay rent for February 2016 (\$580.00) and March 2016 (\$580.00) and that he is entitled to those amounts totalling, \$1,160.00.

The landlord applied to keep the tenant's \$290.00 security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The tenant's application to cancel the 10 Day Notice is dismissed.

The landlord is granted an order of possession for unpaid rent.

The landlord is granted a monetary order for \$970.00.

The landlord is provided with these orders in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme 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: March 24, 2016

Residential Tenancy Branch

