



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, 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 for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on June 07, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail. The Agent for the Landlord cited a tracking number that corroborates this statement. The Tenant stated that he received notice of registered mail in early June but he did not pick the mail up because he lost the registered mail notice. In the absence of evidence to the contrary, I find that these documents were served in accordance with section 89 of the *Residential Tenancy Act (Act)*.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for more time to cancel a Notice to End Tenancy, to cancel a Ten Day Notice to End Tenancy for Unpaid Rent, for “other” and to recover the fee for filing this Application for Dispute Resolution. In the “Details of Dispute” section of the Application for Dispute Resolution the Tenant referred to repairs and the need for rent receipts. At the outset of the hearing the Tenant stated that his concerns with repairs and rent receipts have been resolved.

The Tenant stated that on May 30, 2015 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Landlord. The Landlord acknowledged receipt of these documents and I am satisfied they were served in accordance with section 89 of the *Act*.

On June 16, 2016 the Landlord submitted 49 pages of evidence to the Residential Tenancy Branch, which included a Monetary Order Worksheet that declares the Landlord is seeking \$795.00 in unpaid rent and a filing fee of \$100.00. The Landlord

stated that this evidence was personally served to the Tenant on June 14, 2016. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

Although the Tenant did not receive the Landlord's Application for Dispute Resolution, due to his own error, I am satisfied that the Tenant is not unduly disadvantaged by that fact and I find it reasonable to consider all issues in dispute at these proceedings. In reaching this conclusion I was influenced by the fact the Tenant has filed an application to dispute the Ten Day Notice to End Tenancy and that the Tenant should, therefore, be prepared to discuss the merits of that Notice.

In determining it was reasonable to consider the Landlord's claim for compensation for unpaid rent at these proceedings I was influenced by the fact the Tenant received a Monetary Order Worksheet in which the Landlord declared that she is seeking compensation for unpaid rent, in the amount of \$795.00. I therefore find that the Tenant knew, or should have known, that these proceedings related to overdue rent and he should have been prepared to discuss the merits of that claim.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should the Ten Day Notice to End Tenancy for Unpaid Rent be set aside?
Should the Tenant be granted more time to apply to set aside the Ten Day Notice to End Tenancy for Unpaid rent?
Is the Landlord entitled to an Order of Possession?
Is the Landlord entitled to a monetary Order for unpaid rent?
Should the Landlord be permitted to keep all or part of the security deposit?

Preliminary Matter

At the outset of the hearing the Landlord applied to amend the amount of the monetary claim for unpaid rent to include a claim for unpaid rent from June of 2016. On the basis of the Monetary Order Worksheet served to the Tenant I find that the Tenant knew, or should have known, that the Landlord was seeking compensation for unpaid rent. I find that the Tenant knew, or should have known, that the Landlord would be seeking all rent that was currently owed, including rent that became due since the Landlord filed this Application for Dispute Resolution. I therefore grant the Landlord's application to amend the monetary claim to include unpaid rent from June of 2016.

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on August 01, 2014;

- the Tenant agreed to pay monthly rent of \$595.00;
- sometime after the tenancy began the parties agreed rent would be due by the fifteenth of each month, instead of the first day of each month;
- the Tenant paid a security deposit of \$297.50;
- the Tenant still owes \$200.00 in rent from April of 2016;
- the Tenant did not pay any rent for May or June of 2016;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which has a declared effective date of May 31, 2016, was personally served to the Tenant on May 21, 2016; and
- the Ten Day Notice to End Tenancy declared that the Tenant owed \$795.00 in rent that was due on May 15, 2016.

The Tenant stated that he was withholding his rent until the Landlord made repairs to the rental unit, which have now been completed.

Analysis

On the basis of the undisputed evidence I find that:

- the Tenant entered into a tenancy agreement with the Landlord that currently requires the Tenant to pay monthly rent of \$595.00 by the fifteenth day of each month;
- the Tenant still owes \$200.00 in rent for April of 2016; and
- the Tenant has not paid rent for May or June of 2016.

Section 26 of the *Act* requires a tenant to pay rent when it is due whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. In the absence of evidence that the Tenant has a legal right to withhold rent, I find that the Tenant must pay \$1,390.00 in rent to the Landlord for the period ending June 30, 2016.

Section 46(1) of the *Act* entitles landlords to end the tenancy within ten days, by providing proper written notice, if rent is not paid when it is due. On the basis of the undisputed evidence, I find that the Ten Day Notice to End Tenancy that is the subject of this dispute, served pursuant to section 46 of the *Act*, was personally served to the Tenant on May 21, 2016.

As the Tenant still has not paid all of the rent that was due on May 21, 2016 and he was served with a Ten Day Notice to End Tenancy that complies with section 52 of the *Act*, I find that the Landlord has the right to end this tenancy pursuant to section 46 of the *Act*. I therefore dismiss the Tenant's application to set aside this Notice to End Tenancy and I grant the Landlord's application for an Order of Possession.

As the Landlord has established grounds to end this tenancy pursuant to section 46(1) of the *Act*, I have not considered whether the tenancy should also end in accordance

with section 46(4) of the *Act*. I therefore find that it is not necessary to consider the Tenant's application for more time to apply to cancel the 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 an Application for Dispute Resolution.

I find that the Tenant's application has been without merit and I dismiss his application to recover the cost of filing an Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on June 30, 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 \$1,490.00, which is comprised of \$1,390.00 in unpaid rent and \$100.00 in compensation for fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$297.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,092.50. In the event that 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: June 27, 2016

Residential Tenancy Branch