



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHELMAR ENTERPRISES,
VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The landlords were represented by their agent. The tenant was represented by his agent (the occupant). All were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The agent testified that the landlords served the tenant with the dispute resolution package on 2 June 2016 by registered mail. The agent testified that the mailing was accepted on 9 June 2016. The occupant acknowledged receipt. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 89 of the Act.

The agent testified that the landlords served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 16 May 2016 by posting that notice to the tenant's door. The occupant did not dispute service. On the basis of this

evidence, I am satisfied that the tenant was deemed served with the 10 Day Notice pursuant to sections 88 and 90 of the Act.

Related Application

The landlords previously made an application for dispute resolution by way of the direct request process. That application was in respect of a 10 Day Notice issued 7 April 2016. In a decision dated 29 April 2016, the adjudicator found that the landlords did not serve the 10 Day Notice by using a method that complied with the Act. The adjudicator dismissed the landlords' direct request, but granted the landlords leave to reapply on the monetary issue.

Preliminary Issue – Tenant's Request to Submit Evidence after the Hearing

The occupant asked to submit evidence after the hearing. In particular, the occupant insisted that the tenant had sent in receipts to the Residential Tenancy Branch by fax. No such fax was received. The tenant sent these documents on 20 June 2016 and did not serve a copy of the evidence on the landlords. The occupant stated that she was not aware of the obligations and rules regarding service of the respondent's evidence. The agent and witness deny that the receipts alleged were ever provided by the landlords or their agents to the tenant or occupant.

Rule 3.19 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) provides that I may direct that evidence be submitted after the commencement of a hearing. After considering the potential prejudice to the parties I declined to do so. Admitting this evidence, would require that the hearing be adjourned and reconvened as there are issues with the authenticity of the documents. This delay would unduly prejudice the landlord. The occupant was permitted to testify to the existence of the receipts.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around it are set out below.

This tenancy began 15 January 2016. Monthly rent in the amount of \$695.00 is due on the first. The landlords continue to hold the tenant's security deposit in the amount of \$347.50, which was collected at the beginning of this tenancy.

On 16 May 2016 the landlords issued the 10 Day Notice to the tenant, which set out an effective date of 26 May 2016. The 10 Day Notice set out that it was given as the tenant had failed to pay rent in the amount of \$1,390.00 that was due 1 May 2016. The amount of arrears included \$695.00 from April and \$695.00 from May.

The agent testified that the tenant did not pay rent for April, May or June. The agent testified that she is not aware of any reason that would permit the tenant to deduct any amount from rent.

The witness testified that she has not received cash payments from the tenant or occupant for the months in issue. The witness testified that the tenant promised to make payments, but none were made. The witness testified that she is not aware of any reason that would entitle the tenant to deduct any amount from rent.

The occupant testified that rent was paid in cash to the witness, who acts on behalf of the landlords. The occupant testified that the witness provided receipts to the tenant. The occupant stated that the tenant had submitted the receipts. The landlords were not in possession of the tenant's evidence. The Residential Tenancy Branch was not in possession of any evidence. I confirmed that no such evidence was received.

The occupant alleges that this dispute centers on a cat and does not have to do with unpaid rent.

The landlords claim for \$2,085.00 in rent arrears.

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.

The occupant testified that the tenant paid the rent for April, May and June and that receipts were issued. The witness testified that the tenant did not pay rent for April, May or June and that she did not issue receipts for the months in issue. The agent testified that the tenant did not pay rent for April, May or June.

At most, one version of events can be true. In weighing the evidence, I must determine the credibility of the witnesses. The often cited test of credibility is set out in *Faryna v Chorny*, [1952] 2 DLR 354 (BCCA) at 357:

The real test of the truth of the story of a witness... must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find the occupant's version of events to be incredible. Her version was not readily recognized as reasonable in the circumstances. I found the witness to be highly credible in her testimony. She was provided her evidence sincerely and directly. For these reasons, I find that the tenant has not paid the outstanding rent arrears and did not pay the outstanding rent within five days of receiving the 10 Day Notice.

The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by 29 May 2016, the corrected effective date of the 10 Day Notice. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the tenant failed to pay rent in the amount of \$2,085.00. In failing to pay his rent, the tenant breached section 26 of the Act and his tenancy agreement, and caused the landlords to incur a loss. I find that the landlords have proven their entitlement to the rent arrears. The landlords are entitled to a monetary order for the unpaid rent.

The agent testified that the landlords continue to hold the tenant's \$347.50 security deposit, plus interest, paid in January 2016. Over that period, no interest is payable. The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$1,837.50 under the following terms:

| Item | Amount |
|-----------------------------|-------------------|
| Unpaid April Rent | \$695.00 |
| Unpaid May Rent | \$695.00 |
| Unpaid June Rent | 695.00 |
| Offset Security Deposit | -347.50 |
| Recover Filing Fee | 100.00 |
| Total Monetary Order | \$1,837.50 |

Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The landlords are 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 subsection 9.1(1) of the Act.

Dated: June 29, 2016

Residential Tenancy Branch