



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MND, MNSD, FF; MT, CNR, OPT

Introduction

This hearing addressed the landlord's 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, money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and damage to the unit, pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing also addressed the tenant's cross application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization for more time to make an application to cancel a notice to end tenancy, pursuant to section 66;
- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"), pursuant to section 46; and
- an order of possession of the rental unit, pursuant to section 54.

The tenant and landlord attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant confirmed receipt of the landlord's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was served with the landlord's application.

The tenant testified that on May 25, 2016 he forwarded the tenant's application for dispute resolution hearing package via registered mail to the landlord. The tenant provided a Canada Post tracking number as proof of service. The landlord testified that he did not receive the tenant's hearing package. Although the landlord stated he did not receive the tenant's hearing package, the tenant has provided sufficient evidence it was served. Based on the testimony of

the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the landlord has been deemed served with the application on May 30, 2016, the fifth day after its registered mailing.

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, money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and damage to the unit?

Is the landlord authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Is the landlord authorized to recover the filing fee for this application from the tenant, pursuant to section 72?

Is the tenant authorized for more time to make an application to cancel the 10 Day Notice? If so, should the 10 Day be cancelled?

Is the tenant entitled to an order of possession?

Background and Evidence

The landlord could not recall when the tenancy began but estimated it was two years ago. The tenant testified that this tenancy began on February 10, 2013 on a month-to-month basis. Rent in the amount of \$875.00 was payable on the first of each month. The tenant remitted \$425.00 for the security deposit at the start of the tenancy. The tenant continues to reside in the rental unit.

A 10 Day Notice for unpaid rent of \$875.00 due on May 1, 2016 was issued to the tenant on May 6, 2016 by way of posting to the rental unit door. The notice indicates an effective move-out-date of May 16, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on May 9, 2016, three days after its posting.

The landlord seeks a monetary order of \$1,750.00 for unpaid rent from May to June 2016. The landlord claimed that the tenant has not paid any rent for the above two months. The landlord did not specify an amount he was seeking in damages but stated he anticipated he would incur cleaning costs upon the tenant's vacancy. The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenant.

The tenant filed his application to dispute the 10 Day Notice on May 20, 2016. The tenant testified he filed his application one day late because he was uncertain of the process and was

told by the Service BC employee to file on this date. The tenant acknowledged he did not pay rent for May and June. The tenant explained that historically each month half the rent was paid directly to the landlord by the Ministry and the remaining half was typically collected by the landlord from the tenant's father each month. The tenant explained that sometime in late April he became aware that the Ministry would no longer be paying the landlord directly; however, the tenant contended that the landlord should have collected the May and June rent in its entirety from his father.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. The tenant acknowledged the Ministry portion of his rent payments ceased sometime in April yet the tenant did nothing to ensure rent was paid in its entirety for May and June. I find the tenant failed in his obligation under section 26 of the *Act* to ensure rent was paid for May and June.

According to the *Residential Tenancy Policy Guideline 36. Extending a Time Period*, an arbitrator may not extend the time limit to apply for arbitration beyond the effective date of a notice to end tenancy. Based on the method of delivery, the corrected effective date of the 10 Day Notice that was issued to the tenant is May 19, 2016. As May 20, 2016, the date of the tenant's application, falls beyond the corrected effective date of May 19, 2016, I find the tenant is not entitled to an extension of time to file an application. Therefore, I find the tenant's application to cancel the 10 Day Notice and application for an order of possession is dismissed without leave to reapply.

Based on the landlord's testimony and the notice before me, I find that the tenant was served with an effective notice. As the tenant did not pay the overdue rent or file an application in time to dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to a two (2) Day order of possession, pursuant to section 55 of the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* (the "*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that the current rent for this unit is \$875.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent from May to June 2016. Therefore, I find that the landlord is entitled to \$1,750.00 in rent.

Although the landlord anticipates there will be costs associated with the vacancy, I find the claim to damages is premature as the tenant had not vacated the rental unit at the time the application was made. For this reason I dismiss the landlord's application for damages with leave to reapply. Therefore, I find that the landlord is not entitled to any compensation other than outstanding rent in the amount of \$1,750.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$425.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$1,325.00. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$1,425.00.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**.

I issue a monetary order in the landlord's favour in the amount of \$1,425.00 against the tenant.

I dismiss the landlord's application for damages to the rental unit with leave to reapply.

The tenant's application to cancel the 10 Day Notice and application for an order of possession is dismissed without leave to reapply.

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 17, 2016

Residential Tenancy Branch