



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC, MNR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord. The Landlord applied for an Order of Possession for cause and a Monetary Order for unpaid rent.

Preliminary Issues

The Tenant and a party for the landlord named on the Application appeared for the hearing and provided affirmed testimony. The hearing process was explained and no questions were asked of the proceeding instructions.

The party for the landlord explained that he was the agent for the new company Landlord of the building and that they had taken over the agent of the landlord named on the Application. The Tenant confirmed that the party appearing for the landlord named on the Application was the new Landlord and that he knew the new Landlord’s agent appearing for this hearing. The parties then consented to amending the Landlord’s Application to reflect the new Landlord as the Applicant in this case. Accordingly, this change was reflected in the style of cause that appears on the front page of this decision.

When the Landlord presented his monetary claim during the hearing, the Landlord requested to recover the filing fee and offset the monetary claim for unpaid rent against the Tenant’s security deposit. Pursuant to my authority under Section 64(3) (c) of the *Residential Tenancy Act* (the “Act”), I allowed this amendment on the Application. The Tenant confirmed receipt of the Application and stated that he was looking for a place to move to but could not commit to ending the tenancy mutually during the hearing. Therefore, I continued the hearing by considered the evidence of the parties as follows.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to unpaid rent?

- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of his claim for unpaid rent?

Background and Evidence

The parties agreed that this tenancy started on July 1, 2010 between the old landlord, the Tenant, and the Co-tenant. A written tenancy agreement was signed which required the both tenants to pay \$765.00 in rent on the first day of each month. Through a series of rent increases the current rent payable is \$827.00. The tenants also paid the old landlord \$382.50 security deposit which the current Landlord still retains.

The Landlord testified that the tenants had been paying their rent during this tenancy repeatedly late. As a result, the old landlord served the tenants with a 1 Month Notice to End Tenancy for Cause (the "Notice") on April 13, 2016 in their mail slot. The Notice was provided into evidence and shows that the reason for ending the tenancy was because the tenants were repeatedly late paying rent. The Notice details a vacancy date of May 30, 2016.

The Landlord testified that the Co-tenant vacated the rental unit shortly after that and the Tenant remains. The Landlord testified that the Tenant has not paid any rent for June or July 2016 and is in rental arrears for the amount of \$1,654.00. Therefore, the Landlord now seeks to end the tenancy and recover unpaid rent.

The Tenant confirmed receipt of the Notice on April 13, 2016 from his mail slot and confirmed that he had not made an Application to dispute the Notice. The Tenant stated that he was not repeatedly late paying rent to the Landlord in respect to his portion of the rent and that the co-tenant was the one paying rent late and that he was not aware of this.

The Tenant explained that he had tried to pay rent to the old landlord for June 2016 but the old Landlord refused to accept it. The Tenant provided no evidence to support this testimony. However, the Tenant confirmed that he had not paid any rent for July 2016 and did not dispute the amount of rental arrears being claimed by the Landlord.

Analysis

I have examined the Notice and I find that the contents of the Notice complied with the requirements of Section 52 of the Act. I accept the undisputed evidence that the Tenant was served with and received the Notice on April 13, 2016.

Section 47(5) of the Act explains that if a tenant fails to make an Application to dispute the Notice, then they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice. There is no evidence before me that the Tenant made an Application to dispute the Notice. Therefore, I find the Tenant is conclusively presumed to have accepted the Notice and that the tenancy ended on the vacancy date of the Notice.

Furthermore, Policy Guideline 13 titled Rights and Responsibilities of Co-tenants states that Co-tenants are jointly and severally liable for any debts or damages relating to a tenancy. Therefore, if a Co-tenant fails to pay rent or pays rent late, the Co-tenant(s) must bear the consequences of that breach.

As the effective vacancy date of the Notice has now passed and the Tenant is in rental arrears, I find the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenant. This order may then be filed and enforced in the BC Supreme Court as an order of that court if the Tenant fails to vacate the rental unit.

In relation to the Landlord's monetary claim, I accept the undisputed evidence that the Tenant is responsible for the rental arrears in the amount of \$1,654.00. As a result, the Landlord is awarded the rental arrears claimed.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the \$100.00 filing fee for the cost of this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$1,754.00.

As the Landlord already holds \$382.50 in the Tenant's security deposit, pursuant to Section 72(2) (b) of the Act, I order the Landlord to retain this amount in partial satisfaction of the claim awarded. As a result, the Landlord is granted a Monetary Order for the outstanding balance of \$1,371.50. This order must be served on the Tenant and may then be enforced in the Small Claims Division of the Provincial Court as an order of that court if the Tenant fails to make payment.

Conclusion

The Landlord is granted an Order of Possession effective two days after service on the Tenant. The Landlord may keep the Tenant's security deposit and is granted a Monetary Order for the outstanding rental arrears in the amount of \$1,371.50.

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: July 12, 2016

Residential Tenancy Branch