



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR MNSD FF CNR MNDC OLC

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* for Orders as follows:

Landlord:

- an order of possession for failure to pay rent and utilities 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.

Tenant:

- cancellation of the landlord's 10 Day Notice to End Tenancy for unpaid rent 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 requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Issues

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

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?
Is the tenant entitled to compensation for damage or loss and an order requiring the landlord to comply?

Background and Evidence

A written tenancy agreement was entered into and signed by the parties on November 3, 2014. A copy of the written agreement was provided on file. The tenancy began on November 15, 2014 with a monthly rent of \$1400.00 payable on the 1st day of each month. The tenant paid a security deposit and pet deposit totalling \$1400.00 at the start of the tenancy which the landlord continues to hold.

The landlord's claim is for outstanding rent in the amount of \$4200.00. The landlord testified that this includes unpaid rent for the months of May, June and July 2016.

The tenant agreed to the amount of outstanding rent as claimed by the landlord. The parties agreed that past practice was for the tenant to pay \$1050.00 per month directly to the landlord by e-mail money transfer and the remaining \$350.00 per month was remitted to the Canada Revenue Agency (CRA) by the tenant on behalf of the landlord as the landlord was a non-Canadian resident. This arrangement had been in place since the beginning of the tenancy.

The landlord testified that on June 2, 2016 he served the tenant with the 10 day Notice to End Tenancy for unpaid rent or utilities by registered mail.

The tenant acknowledged he received the 10 day Notice on June 4, 2016. The tenant further acknowledged that the full amount of the arrears indicated on the Notice was not paid within five days of receiving the Notice. The tenant acknowledged that as of the hearing date, no rent payments have been made to the landlord or to CRA for the months of May, June and July 2016.

The tenant's application included a claim for compensation for damage or loss and an order for the landlord to comply as they alleged the landlord was breaking their lease in order to sell the rental unit or increase the rent. The tenant submitted that they had a verbal agreement with the landlord to extend the original lease for another 1 year fixed term. The landlord denied any verbal agreement to extend the original lease for another fixed term and took the position that it was now on a month-to-month basis.

Analysis

I am satisfied that the tenant was served with the 10 day Notice to End Tenancy on June 4, 2016 pursuant to sections 88 of the Act.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, June 18, 2016.

I find that the tenant was obligated to pay monthly rent in the amount of \$1400.00 but failed to pay rent for the months of May, June and July 2016. I accept the landlord's claim for outstanding rent of \$4200.00. Although the parties testified that past practice was for the tenant to directly pay a portion of this rent to CRA, I am awarding the landlord the full amount of the outstanding rent as the tenant has acknowledged CRA remittances were not made for the months in dispute. If the parties agree or if the CRA holds the tenant liable for the unpaid portion of these months, the enforceable portion of this order may be reduced accordingly.

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 for a total monetary award of \$4300.00.

The landlord continues to hold a security deposit of \$1400.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$2900.00.

As this tenancy has ended as a result of the tenant's failure to pay rent, the tenant's claims for compensation due to the landlord breaking the lease and request for the landlord to comply are dismissed.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2900.00. Should the tenant 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.

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 14, 2016

Residential Tenancy Branch