



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NELSON CARES SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MND, MNR, MNSD, FF, O

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to keep the Tenant's security deposit, for damages to the rental unit, to recover the filing fee from the Tenant, and for "Other" undisclosed issues. The Landlord also amended the Application to increase the monetary claim.

Two agents for the Landlord and the Tenant appeared for the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlord's Application and the amended Application by registered mail. The Tenant stated that he had provided late evidence for this hearing and that this pertained to the Landlord's monetary claim. However, during the hearing, the Landlord's agents withdrew the monetary claim and therefore I did not consider the Tenant's late evidence.

The Landlord withdrew the monetary claim so that the parties could work together to determine the exact amount of rental arrears and damages to the rental unit that were owed to the Landlord. The Tenant agreed to the withdrawal of the claim and stated that he was willing to work with the Landlord's agents with regards to the monies owed as he confirmed that he had not paid rent. Therefore, the only issue left for me to deal with on the Landlord's Application was for an Order of Possession. The Landlord's agents stated that they had applied to end the tenancy because the Tenant had not paid rent and that the Tenant had signed a mutual agreement to end the tenancy. Therefore, I amended the Landlord's Application to also include a request for an Order of Possession for breach of an agreement as the Tenant confirmed that he was aware of the mutual agreement to end the tenancy. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present evidence, make submissions to me, and cross examine the other party on the evidence provided in relation to the issues to be decided.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

The parties both agreed that this tenancy started on October 9, 2011 and rent was determined based on the Tenant's income as this was a government subsidized rental unit. A written tenancy agreement was completed even though this was not provided into evidence. The parties confirmed that at the start of the tenancy the rent was established at \$568.00 payable on the first day of each month. However, the Tenant failed to provide necessary information for the Landlord to complete the calculation for the rent payable according to the terms of the tenancy agreement. As a result, the rent was increased to \$725.00 payable on June 1, 2016 onwards. The Tenant paid \$422.00 as a security deposit to the Landlord at the start of the tenancy which the Landlord still retains.

The Landlord testified that the Tenant failed to pay rent for June and July 2016. As a result, the Tenant was served with a notice to end tenancy for unpaid rent on July 7, 2016 which the Tenant did not dispute by way of making an Application. The Landlord then referred to a mutual agreement to end the tenancy document which had been signed by both parties on June 14, 2016 which ends the tenancy on September 1, 2016.

The Tenant confirmed that he had signed the mutual agreement to end the tenancy on June 14, 2016 and explained that he could not move out of the rental unit by September 1, 2016 because he was having difficulties finding another place to move to due to a multitude of disabilities he had. The Tenant requested the Landlord's agents to give him more time to vacate the rental unit and proposed a date of November 1, 2016. The Landlord's agents were agreeable to this date only if the Tenant was willing to pay the Landlord's monetary claim. The Tenant argued that the Landlord had increased his rent to \$725.00 because he had failed to provide the necessary documentation they required to calculate his subsidy and determine his rent. The Landlord's agent replied that the Tenant had not provided important information about his business interests after multiple requests were made of him and had only received this information three days prior to this hearing. The Landlord's agents withdrew their monetary claim and stated that by September 7, 2016 they will provide the Tenant with the re-calculated rental arrears he is owing based on the information he has provided and he will have by September 9, 2016 to pay the outstanding amount. If the Tenant fails to do so, the Landlord's agents requested that they would enforce the ending of the tenancy if they were successful with an Order of Possession. However, if the Tenant pays the monies

owed as determined by the Landlord, then the Landlord will give the Tenant until November 1, 2016 to vacate the rental unit provided rent is continued to be paid.

Analysis

Section 44 of the Act stipulates how a tenancy ends. In particular, Section 44 (1) (b) (c) of the Act states that a tenancy ends if the landlord and tenant agree in writing to end the tenancy. I accept the undisputed evidence that the parties agreed in writing to end the tenancy on June 14, 2016 effective for September 1, 2016. However, the Tenant has failed to comply with this agreement and is now over holding the tenancy.

Therefore, the Landlord is entitled to an Order of Possession. This order is effective two days after it is served on the Tenant. The Landlord may file and enforce this order in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit. However, the parties agreed to work together on the rental arrears and damages that are to be determined. If the Tenant fails to make the payment requested by the Landlord by September 9, 2016 irrespective of whether the Tenant agrees with the amount calculated by the Landlord, the Landlord is at liberty to enforce the Order of Possession as this is granted on the basis that the Tenant has breached the mutual agreement. As the Landlord has been successful in obtaining an Order of Possession, I grant the Landlord the \$100.00 filing fee pursuant to Section 72(1) of the Act. The Landlord may achieve this relief by deducting \$100.00 from the Tenant's security deposit pursuant to Section 72(2) (b) of the Act.

Conclusion

The Tenant has breached a mutual agreement to end the tenancy. The Landlords are therefore issued with a two day Order of Possession as the effective date has not passed and may recover their filing fee from the Tenant's security deposit. The Landlord withdrew the monetary claim during the hearing and is provided leave to re-apply. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 02, 2016

Residential Tenancy Branch