



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, CNE, CNR, MNR, OPR, OPC, MNSD, MNDC, FF

Introduction

This was a cross-application hearing.

The landlord applied requesting an order of possession for unpaid rent and cause, compensation for unpaid rent, damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied to cancel a Notice to end tenancy for cause, unpaid rent and end of employment.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The tenant confirmed that he vacated the rental unit September 1, 2016. Therefore, the tenants' application is dismissed as there is no need to cancel any eviction Notice.

The tenants' application was amended to remove witness M.B. as an applicant. M.B. was a roommate, not a tenant.

At the start of the hearing the landlord withdrew the claim for loss of September 2016 rent. The landlord does not require an order of possession as they now have possession of the rental unit.

A six page and 15 evidence submission supplied by the landlord were not given to the tenant. That evidence was set aside and the landlord was at liberty to make oral submissions.

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid rent for July and August 2016 in the sum of \$1,900.00?

Background and Evidence

The tenancy commenced in 2015; the start date was in dispute. Rent effective November 2015 was \$950.00 due before the end of each month. Rent was paid in cash and receipts were not issued. A tenancy agreement was not signed. The landlord is holding a security deposit in the sum of \$550.00. The deposit was paid by the tenant and a previous co-tenant.

The tenant vacated on September 1, 2016 as the result of two Notices to end tenancy that he had disputed. A 10 day Notice ending tenancy for unpaid rent was issued on July 28, 2016 and a one month Notice to end tenancy for cause was issued on the same date. The tenant did not pursue his application to dispute the Notices.

The parties disputed the payment of rent. The landlord said that the tenant failed to pay July and August 2016 rent. As a result a 10 day Notice to end tenancy for unpaid rent was issued.

The parties referenced multiple text messages sent during July and August 2016.

The tenant said that on July 28, 2016 he paid the rent by cash; a receipt was not given. The tenant said M.B. was present and saw him pay the rent. The tenant paid July and August rent on the same day.

The landlord pointed to the tenants' application for dispute resolution made on August 2, 2016. In that application the tenants' indicates that he did not pay rent for July as he had been told he was being evicted for renovation. The tenant wrote that he understood he would then have 60 days to move out and two months' rent would be owed by the landlord. The landlord said that the tenants' application proves he did not pay the rent as he said he has.

The tenant submits that he was told a renovation was going to take place and that a family member was going to reside in the unit. The tenant thought he would be entitled to compensation. The only Notices to end tenancy that were issued were for cause and unpaid rent.

The tenant then said that in fact he had paid the rent on August 14, 2016 and he had been mistaken when he presented the July 28, 2016 date.

The tenants' witness M.B. provided affirmed testimony that she saw the tenant pay July and August 2016 rent in full on August 14, 2016. The landlord did not issue a receipt for that payment.

The landlord said he did not receive rent and that on August 25, 2016 they sent the tenant a text asking what his plan for moving out was; they wanted him to move before September 1, 2016. The tenant replied asking what the landlords' idea of a settlement would be and he asked about a payment plan. The tenant said he was referring to damages to the unit, not rent. The tenant read from the email, which included a comment by the landlord that there was simple solution; that the tenant pay July and August rent. The landlord said it was very clear that they were talking about the rent owed.

The tenants' witness J.B. provided affirmed testimony that he saw the tenant pay the rent. The witness could not say how much rent, when it was paid or for what month the rent was paid.

Analysis

From the evidence before me I find that the landlord was entitled to rent payment in the sum of \$950.00 for July and August 2016. There was no Notice ending tenancy issued that would entitle the tenant to compensation. Further, a Notice for landlord's use of the property would entitle a tenant to one months' rent compensation, not two.

Section 26(2) of the Act requires a landlord to issue a receipt for any cash payment made to a tenant. The landlord has confirmed that they breached the Act by failing to issue receipts. The absence of receipts can call into question the payment of rent.

I have considered the text messages, witness statements and submission of the parties and have reached my decision by weighing the credibility of the parties.

I found the tenants' submission inconsistent and contradictory. The tenant submitted an application for dispute resolution on August 2, 2016 in which he confirmed he had not paid the rent owed. When challenged by the landlord, the tenant then altered the date he said he had paid the rent. During the hearing the tenant initially said he paid both July and August on July 28, 2016. Then the tenant said he paid the rent on August 14, 2016. His application for dispute resolution made on August 2, 2016 indicated he had not paid rent up to that time.

Witness M.B. was present with the tenant during the hearing and although the tenant was asked to have the witness remove herself during his testimony I was not confident that the witness was not present or able to hear the tenants' testimony.

I have given the testimony of witness J.B. no weight. That testimony was not credible; the witness could not provide any detail other than to say rent was paid.

I found the actions of the landlord were consistent with the claim. The landlord issued a Notice to end tenancy for unpaid rent in July 2016; they sent messages asking the tenant pay rent after the date the tenant said he had paid. I find these actions, on the balance of probabilities, consistent and reasonable. Even though receipts had not been issued for prior rent payments I remain convinced that the truth of the story lies with the landlords' version of events.

Therefore, I find on the balance of probabilities that the tenant has not paid rent in the amount of \$1,900.00 for July and August 2016, and that the landlord is entitled to compensation in that sum.

As the landlord's application has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$550.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,450.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation for July and August 2016 rent.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

The tenants' application is dismissed.

This decision is final and binding and 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: September 23, 2016

Residential Tenancy Branch