



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent 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 their filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord's counsel (the landlords) confirmed receipt of the tenant's notice of hearing package and the submitted documentary evidence. The tenant confirmed receipt of the landlords' submitted documentary evidence. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

At the outset the tenant clarified that his monetary claim was not related to the request to cancel the notice to end tenancy issued for unpaid rent. The tenant stated that he was seeking compensation for the loss of use of a stove. As such, I find that RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that the tenant has applied for a monetary order for money owed or compensation for damage or loss. As this section of the tenant’s application are unrelated to the main section which is to cancel the notice to end tenancy issued for unpaid rent, I dismiss these sections of the tenant’s claim with leave to reapply.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent?

Are the landlords entitled to a monetary order for unpaid rent and recovery of the filing fee?

Are the landlords entitled to retain all or part of the security deposit?

Is the tenant entitled to an order cancelling the 10 Day Notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant’s claim and my findings are set out below.

Both parties agreed that this was a verbal tenancy agreement which began approximately 4 ½ years ago and was a month-to-month term with a monthly rent of \$525.00 payable on the 1st day of each month. A security deposit of \$262.50 was paid.

Both parties confirmed that the landlord served the tenant with a series of 3 (three) 10 Day Notice(s) for Unpaid Rent (the 10 Day Notice(s)) dated November 6, 2016 in person for September 1, 2016, October 1, 2016 and November 1, 2016. The landlord clarified that he had waited for the tenant to pay the rent, but decided that he could no longer after 3 months, hence the 3 notices. The 10 Day Notice dated November 6, 2016 sets out that the tenant failed to pay rent of \$525.00 that was due on September 1, 2016 and displays an effective end of tenancy date of November 16, 2016. The 10 Day Notice dated November 6, 2016 sets out that the tenant failed to pay rent of \$525.00 that was due on October 1, 2016 and displays an effective end of tenancy date of November 16, 2016. The 10 Day Notice dated November 6, 2016 sets out that the

tenant failed to pay rent of \$525.00 that was due on November 1, 2016 and displays an effective end of tenancy date of November 16, 2016.

The landlord seeks an order of possession and a monetary order for unpaid rent of \$1,575.00.

The tenant disputed the landlords' claims stating that rent has been paid in full each month. The tenant stated that the last few months the tenant had paid in cash the \$525.00 monthly rent to the landlords' mother. The tenant's witness, A. G. stated that he has lent money to the tenant on numerous occasions for the tenant to pay his rent. The witness stated that he was present on each occasion over the last few months when the tenant paid the landlord's mother. The witness was unable to provide any details of when the rent was paid other than to state that the mother was an older lady.

The landlords dispute the tenant's claims stating that no rent has been paid. The landlords' have submitted a copy of a self-declared statement from his mother-in-law. It states in part that the mother-in-law is visiting from India and that she has not collected any rent from the tenant during her stay in Canada. The landlords also stated that the tenant's witness has provided a different spelling of his name than that provided to the RTB. The landlords also stated that the tenant and his witness are not believable. I note that neither the tenant nor his friend, A.G. have provided any records of rent payment or where the cash came from.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I find, on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. Although the tenant's witness, A.G. has stated that he was present when the tenant paid the rent to the landlords mother the witness failed to provide sufficient details of any of the transactions or provide any evidence to support their claim that rent was paid in cash to the landlords' mother. I find that the tenant failed to provide sufficient evidence to satisfy me that would indicate that he paid rent for all three months. The tenant's application to cancel the 10 Day Notice is dismissed.

As the tenant is not entitled to have the 10 Day Notice cancelled, I find that the landlord is entitled to a two-day order of possession.

I find that the landlord has proven that the tenant failed to pay rent for both September, October and November and that he is entitled to those amounts totalling \$1,575.00.

The landlords having been successful in their application are entitled to recovery of the \$100.00 filing fee.

I authorize the landlords to retain the \$262.50 security deposit in partial satisfaction of the claim. No interest is payable during this period.

Conclusion

The tenant's application is dismissed.

The landlord is granted an order of possession for unpaid rent.

The landlord is granted a monetary order for \$1,412.50.

These orders must be served upon the tenant. Should the tenant fail to comply with these orders, these orders may be filed in the Supreme Court of British Columbia and 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: December 07, 2016

Residential Tenancy Branch