



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution (the "Application") filed November 17, 2016 seeking an order of possession and a monetary order based on a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice").

Both the landlord and the tenant attended the hearing and gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions.

At the outset of the hearing I advised the parties of their option to have me assist in mediating an agreement with respect to this tenancy. I further advised that any agreement would be documented in my decision pursuant to section 63 of the Act, and that settlement was not mandatory. A settlement was attempted but was not reached.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

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

Background and Evidence

No written tenancy agreement was submitted in evidence. The tenant testified that he had signed an agreement at the beginning of the tenancy but that the landlord had the only copy of it, and that it was not necessarily complete. The landlord testified that there was no written tenancy agreement. There was no security deposit.

Both parties agreed that the tenancy started on February 1, 2016 and that monthly rent was originally \$700.00. The landlord testified that rent was due on the first of the month.

The tenant agreed that rent was due on the first, but noted that the landlord had accepted rent at a later date on several occasions, and had been somewhat lenient about when it was received. Both parties also agreed that monthly rent was renegotiated to \$900.00 when an additional tenant moved into the rental unit. However, the parties disagreed as to whether monthly rent remains at \$900.00 when (as now) there is only one occupant.

The landlord issued a 10 Day Notice, with an effective date of September 21, 2016, for outstanding September rent. The landlord testified that he served the 10 Day Notice on the tenant by posting it on his door, and submitted a written statement from a witness stating that the 10 Day Notice was served on the tenant on September 21, 2016. However, the 10 Day Notice is dated November 14, 2016. The landlord stated that this is because he did not initially remember to date the 10 Day Notice, and inserted the November date at a later time.

The tenant testified that he did not receive the 10 Day Notice in September, and that he suspects that his then-roommate may have removed it from the door of the rental unit out of spite. The tenant also testified that he did receive the 10 Day Notice on or about November 18, 2016, at the same time that he received the landlord's Application, supporting materials, and Notice of Hearing by registered mail. The landlord has provided the Canada Post registered mail receipt in evidence.

The tenant and the landlord agree that there is a portion of the rent outstanding for September but disagree on how much that is. The landlord says that the tenant's former roommate paid a portion of the \$900.00 owing for September but that the tenant has not paid the balance. The tenant says that he paid the landlord an amount in cash in September, but did not receive a receipt. The tenant could not recall the exact amount that he says he paid in cash for September. The landlord denies having received any cash from the tenant in September and says that his practice is to rely on e-transfer receipts as records of rental payments. The landlord has submitted records of e-transfer payments showing monies received between February and September of 2016 for the rental unit, most of which record payments made on behalf of the tenant from third parties and not directly from the tenant.

Both of the parties agreed that the tenant has not paid rent for October, November, or December, and that the tenant remains in the rental unit. The tenant testified that he has been unable to pay rent because he lost his job, but that he would soon have money and be able to meet his obligations.

Analysis

Based on the above, I find that the tenant was served with the 10 Day Notice on November 18, 2016, when he received it, along with the landlord's Application package, by registered mail. Although the landlord signed the 10 Day Notice after he says he issued and served it, I find that it is compliant with s. 52, because it was signed and dated. However, I consider that it was signed on November 14, 2016 (as indicated on the notice itself) and served on November 18, 2016 (as admitted by the tenant), rather than in September. I further find that the 10 Day Notice has a corrected effective date of November 28, 2016 (10 days from the date of service) pursuant to s. 53 of the Act.

Section 46 of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after it is due by giving notice to end the tenancy effective on a date no earlier than 10 days after the tenant receives the notice. Under subsection (4), the tenant has 5 days after receipt of the notice to pay the overdue rent or dispute the notice by making an application for dispute resolution, failing which the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

As the 10 Day Notice was served on November 18, 2016, and the tenant did not pay rent or apply to dispute it within 5 days of that date, the tenant is conclusively presumed, pursuant to s. 46(5), to have accepted that the tenancy ended on the effective date of the 10 Day Notice, and was required to vacate by that date. As this has not occurred, and the 10 Day Notice is compliant with s. 52, the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the Act. It does not matter in this analysis whether the landlord has not always insisted on payment on the first of the month, and, the fact is, the tenant is now many months overdue with the rent in any event.

Section 7(1) of the Act provides that a tenant who does not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. The parties agree that rent is outstanding for October, November, and December, and I accept the landlord's evidence that the tenant did not pay any rent for September, in part because I find that rent was otherwise not paid in cash and in part because the tenant could not recall or substantiate the amount he says he paid. The landlord's e-transfer receipts show that the tenant's former roommate paid \$400.00 towards September rent. Accordingly, I find the tenant owes \$500.00 for September rent.

I further find that monthly rent was \$900.00, regardless of whether the tenant had a roommate. I accept the landlord's testimony that the rent was renegotiated after the

tenancy began. This is substantiated by the etransfer receipts in evidence. Additionally, the tenant appeared initially to agree that the monthly rent remained \$900.00, and only afterwards stated that it was \$700.00 with one tenant. Therefore I find the landlord is entitled to a total of \$3,200.00 in rental arrears and loss of rent for the period from September through December, 2016.

Conclusion

The landlord's 10 Day Notice is upheld. The tenancy ended on November 28, 2016.

As the tenant has not paid rent for September, October, November, or December, I grant an Order of Possession to the effective two (2) days after service of the Order. This Order must be served on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$3,200.00 against the tenant. The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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 final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Residential Tenancy Act*.

Dated: December 19, 2016

Residential Tenancy Branch