



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNSD, FF (Landlord's Application)
CNR, O (Tenant's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on December 5, 2016 and by the Landlord on December 18, 2016.

The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent, as well as a request to keep the Tenant's security and pet damage deposits and to recover the filing fee from the Tenant. The Tenant applied to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") and for "Other" issues, namely to determine that the rent should be payable bi-monthly in this tenancy.

Both parties appeared for the hearing and provided affirmed testimony. The parties confirmed receipt of each other's Application and documentary evidence which was served prior to this hearing.

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 their evidence, make submissions to me, and cross examine the other party on the evidence provided.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Tenant entitled to cancel the 10 Day Notice?
- Is the Landlord entitled to unpaid rent and to keep the Tenant's security and pet damage deposits?
- Has the Tenant provided sufficient evidence to show or establish that rent in this tenancy is to be paid on bi-monthly basis?

Background and Evidence

The Landlord testified that parties signed a written tenancy agreement on September 1, 2016 which is the day the tenancy started. The tenancy agreement provided into evidence by the Landlord shows that rent in the amount of \$1,000.00 is payable on the first day of each month. The Tenant paid \$500.00 as a security deposit and \$350.00 as a pet damage deposit, both of which are herein referred to as the "Deposits".

The Tenant disputed the Landlord's evidence stating that the Landlord agreed to allow the Tenant to pay his rent of \$1,000.00 on a bi-monthly basis. The Tenant stated that no exact dates were agreed on for the date the two rent payments were to be made but acknowledged that these were likely to be set at for the start and middle of the month.

The Tenant stated that he may have signed the tenancy agreement but not on September 1, 2016 as testified to by the Landlord but sometime after September 17, 2016. The Tenant testified that he did not read the copy of the agreement that was given to him showing that rent was payable on the first day of each month and was unable to explain how his signature came to be on the tenancy agreement provided by the Landlord into evidence. The Tenant stated that the tenancy agreement was for a fixed term of one year and not a periodic tenancy. The Tenant agreed that the tenancy started on September 1, 2016 and that the total amount of Deposits he paid to the Landlord was \$850.00 as testified to by the Landlord.

The Tenant testified that for each of the months of September, October and November 2016 he paid his rent in two monthly installments which the Landlord accepted. However, the Tenant confirmed that these payments were not made on two consistent dates for each of these months. The Tenant submitted that this was evidence of the verbal agreement by the Landlord that rent was payable on a bi-monthly basis.

The Landlord disputed the Tenant's evidence that there was a verbal agreement to pay rent bi-monthly. The Landlord testified that she regularly had to chase the Tenant for rent each month and that she had not pursued an end to the tenancy for this reason because she was trying to help the Tenant out as he was an employee of the painting company the Landlord owned. The Landlord submitted that the wages paid to the Tenant for his employment at the painting company are a separate matter to this tenancy dispute.

The Landlord testified that on November 1, 2016 the Tenant failed to pay rent in the amount of \$1,000.00. As a result, she served the Tenant with the 10 Day Notice on

December 3, 2016. The 10 Day Notice was provided into evidence and shows a vacancy date of December 11, 2016 due to \$1,000.00 payable on December 1, 2016. The Landlord testified that on December 7, 2016 the Tenant paid \$500.00 towards the monthly rent amount and then paid \$400.00 for the remainder rent on December 23, 2016, leaving an outstanding balance of \$100.00 for December 2016.

The Landlord testified that in addition, the Tenant has only paid \$450.00 for January 2017 rent which was paid on January 10, 2017. The Landlord confirmed during the hearing that the unpaid rental arrears she is claiming in this hearing is \$650.00. The Landlord also claims \$150.00 for the Tenant's failure to pay the full amount of the pet damage deposit at the start of the tenancy.

The Tenant confirmed receipt of the 10 Day Notice posted on his door on December 3, 2016. The Tenant also confirmed the amount of rental arrears of \$650.00 is still outstanding. The Tenant testified that he had withheld \$100.00 rent from December 2016 rent because the Landlord was making him pay for utilities used by neighboring renters which was illegal. The Tenant stated that he is on social assistance and would struggle to make his rent payment in one payment at the start of each month but could do this from March 2017 onwards.

The Landlord stated that the relationship between her and the Tenant had deteriorated and that she wanted the tenancy to end as soon as possible.

Analysis

I accept the Tenant received the 10 Day Notice on his door on December 3, 2016 and made the Application to dispute it on December 5, 2016. Therefore, I find the Tenant made the Application to dispute the 10 Day Notice within the five day time limit provided by Section 46(4) (b) of the *Residential Tenancy Act* (the "Act").

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement **whether or not** the landlord complies with the Act, unless the Tenant has authority under the Act to withhold or deduct payment.

In this case, the Tenant argues that his rent payment was payable bi-monthly in this tenancy. The Tenant relies on a verbal agreement between him and the Landlord which the Landlord denies. The Landlord provided a signed tenancy agreement into evidence which shows that rent is payable on the first day of each month which the Tenant was unsure whether it was signed by him.

In making a finding on this matter, I prefer the Landlord's evidence that the rent was payable on the first day of each month rather than on a bi-monthly basis. This is because the Tenant relies on a verbal agreement which is undocumented and I find this is not sufficient to show that rent was payable on a bi-monthly basis. In such a case, it was incumbent on the parties to have recorded that the rent was to be paid in two installments each month and to establish a set date that rent was payable for each installment as to provide clarity on the obligations of both parties. I find the Tenant does not have free reign to unilaterally decide when he pays rent and certainly the evidence brought forward by the Tenant confirms that he did not pay his rent on two set dates that were consistent each month; this would have given merit to a verbal agreement for rent to be paid bi-monthly.

The Tenant was unsure whether he had signed the tenancy agreement citing that he had not read it after he had received a copy of it. In this respect, I accept on the balance of probabilities, that the tenancy agreement was signed by the Tenant which required the Tenant to pay rent on the first day of each month. I find the Tenant failed to meet the terms of that agreement to pay rent on the first day of each month.

In addition, the Tenant had no authority to deduct \$100.00 from December 2016 rent because the Landlord had asked him to pay for utilities used by neighbouring renters. In this case, the remedy for the Tenant would have been to bring this matter for determination through dispute resolution rather than unilaterally deciding to deduct from rent which is contrary to Section 26(1) of the Act.

Based on the foregoing, I deny the Tenant's request to cancel the 10 Day Notice and grant the Landlord's request for an Order of Possession. As the Landlord has been successful in ending the tenancy, I also allow the Landlord to recover her filing fee of \$100.00 from the Tenant pursuant to Section 72(1) of the Act.

In relation to the Landlord's undisputed monetary claim for \$650.00 in rent owing, I award this amount to the Landlord. Therefore, the total amount owed by the Tenant is \$750.00. As a result, I grant the Landlord's request to obtain this relief from the Tenant's Deposits pursuant to Section 72(2) (b) of the Act.

As the Landlord has received relief for rent up to the end of January 2017, the Landlord is granted an Order of Possession to end the tenancy effective January 31, 2017 at 1:00 p.m. This order must be served on the Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit.

As the tenancy is to shortly end, I decline to deal with the Landlord's request for the Tenant to pay the remainder of the pet damage deposit and determine the Tenant's request to assign rent to be paid on a bi-monthly basis as these are now moot issues to be decided on.

Conclusion

The Tenant has failed to pay rent in this tenancy. Therefore, the Tenant's Application to cancel the 10 Day Notice and for other issues is dismissed without leave to re-apply.

The Landlord is granted an Order of Possession effective on January 31, 2017. The Landlord is allowed to recover unpaid rent and the filing fee from the Tenant's Deposits paid at the start of the tenancy. The Landlord's Application for the Tenant to pay the remainder of the pet damage deposit is dismissed as the tenancy is due to end.

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: January 12, 2017

Residential Tenancy Branch