



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNDC, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, a monetary Order for money owed or compensation for damage or loss, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on December 21, 2016 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted with the Application for Dispute Resolution were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent or utilities?

Background and Evidence

The Landlord and the Tenant agree that:

- the parties did not sign a tenancy agreement;
- the Tenant agreed to pay rent of \$900.00 by the first day of each month;
- the Tenant did not pay any rent since the tenancy began; and
- a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of January 01, 2017, was personally served to the Tenant on December 08, 2016.

The Tenant stated that the tenancy began on August 30, 2016. The Landlord stated that the tenancy began on August 05, 2016.

The Tenant stated that he intends to vacate the rental unit on January 31, 2017. The Landlord stated that he is willing to allow the Tenant to live in the rental unit until January 31, 2017, providing he is required to pay rent for January of 2017.

The Tenant stated that he has not paid rent because the Landlord owes the Tenant money from a business venture that is unrelated to this tenancy. The Tenant acknowledged that the Landlord did not authorize him to withhold rent for any reason. The Landlord stated that he does not owe the Tenant money.

Analysis

There is a general legal principle that places the burden of proving a fact on the person who is seeking compensation, not on the person who is denying the damage. In these circumstances, the burden of proof rests with the Landlord.

I find that the Landlord has submitted insufficient evidence to show that the tenancy began on August 05, 2016. In reaching this conclusion, I was heavily influenced by the absence of evidence, such as a written tenancy agreement, that corroborates the Landlord's testimony that the tenancy began on August 05, 2016 or that refutes the Tenant's testimony that it began on August 30, 2016. As the Landlord has failed to establish that the tenancy began prior to August 30, 2016, I dismiss the Landlord's application for rent for August of 2016.

Section 26 of the Residential Tenancy Act (Act) requires tenants to pay rent when it is due. On the basis of the undisputed evidence that the Tenant did not pay rent for September, October, November, and December of 2016. I therefore find that the Tenant must pay the Landlord rent for these four months, in the amount of \$4,500.00.

As the Tenant stated that he intends to vacate the rental unit on January 31, 2017 and the Landlord stated that he is willing to allow the Tenant to live in the rental unit until January 31, 2017, providing he is required to pay rent for January of 2017, I find that the Tenant must also pay rent for January, in the amount of \$900.00.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. On the basis of the undisputed evidence I find that a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was served to the Tenant on December 08, 2016.

Section 46 of the *Act* stipulates that a Tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I grant the landlord an Order of

Possession. As the Tenant has been ordered to pay rent for January of 2017, the Order of Possession will be effective on January 31, 2017.

In adjudicating this matter I have placed no weight on the Tenant's submission that the Landlord owes the Tenant money from a business venture that is not related to the tenancy. Even if that submission were true, the *Act* does not authorize a tenant to withhold rent money on the basis of a debt that is unrelated to the tenancy.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on January 31, 2017. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$5,500.00, which includes \$5,400.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution and I grant the Landlord a monetary Order for that amount. 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.

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 20, 2017

Residential Tenancy Branch