



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant: CNR
Landlord: OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows.

The tenant applied January 24, 2017 to:

1. Cancel a Notice to End for Unpaid Rent - Section 46

The landlord applied February 06, 2017 for:

1. An Order of Possession respecting unpaid rent - Section 55
2. A Monetary Order for unpaid rent - Section 67
3. To retain the security deposit as offset of the monetary claim – Section 38
4. An Order to recover the filing fee for this application - Section 72

Both parties attended the hearing and were given opportunity to mutually resolve their dispute to no avail. The parties were given full opportunity to present all relevant evidence and relevant testimony in respect to their claims on application and to make relevant prior submission to the hearing and participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Should the Notice be set aside?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started August 15, 2016. Rent in the amount of \$7950.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$3975.00 which they retain in trust. The tenant failed to pay rent in the month of January 2017 following accidental damage to the unit in mid-December 2016. The rental unit was subjected to significant water ingress damage and the resulting demolition and restoration protocol. The parties became embroiled in dispute over compensation for loss and other matters. The landlord served the tenant with a 10 Day Notice to End Tenancy for non-payment of rent (Notice to End or Notice) dated January 20, 2017, personally and via placement in the tenant's mail box / slot. The landlord provided a copy of the Notice to End and an associated Proof of Service document. The Notice to End states the tenant owed rent for January 2017 of \$7950.00. The Notice is absent a specified effective date by which the tenant must move out of the rental unit, stating solely '2017'. The tenant chose to dispute the Notice within the prescribed time to do so. The parties agreed the tenant further failed to pay all the owed rent in/ for February 2017. The parties argued over a portion of the rent purportedly paid in February 2017, without agreement. The tenant acknowledged not paying all rent owed under the tenancy agreement. Both parties respectively confirmed the tenant did not have a right extended under the Act for the tenant to withhold, or reduce the rent.

The landlord testified and submitted evidence of communications with the tenant toward options for the tenant during the damage restoration period, but ultimately becoming a protracted argument over the payable rent. The landlord testified they now have lost trust in the tenant and want to end the tenancy. The tenant testified they have always intended to pay the rent and did not understand they were legally obligated to pay full rent in light of their loss; or, otherwise were obligated to vacate.

Analysis

The full text of the Act, Regulation, and Residential Tenancy Policy Guidelines can be accessed via the RTB website: www.gov.bc.ca/landlordtenant

In parts relevant to this proceeding the following portions of the Act must be noted.

Section 26 of the Act states;

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

And, Section 52 of the Act states;

Form and content of notice to end tenancy

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,

The evidence is that the tenant has not paid the outstanding rent. I find no evidence the tenant had a right under the Act to deduct all or a portion of the rent. Based on the evidence of both parties I find the tenant was served a notice to end tenancy for non-payment of rent. I find the 10 Day Notice to End does not specify an effective date by which the tenant must vacate the rental unit in the absence of paying rent. I find that within the ongoing disputatious communication between the landlord and tenant respecting the restoration work and the payment of rent I am not satisfied that the effective date expectation omitted by the landlord was clearly or otherwise sufficiently communicated to the tenant. I find the Notice to End does not comply with the form and

content requirements of Section 52 to be effective to end the tenancy and under the circumstances I do not find it reasonable to amend the landlord's Notice. As a result, I find the landlord's Notice is not valid to end the tenancy entitling the landlord to an Order of Possession. The Landlord's Notice to End dated January 20, 2017 is set aside and the tenancy continues in accordance with the tenancy agreement. The landlord's application for an Order of Possession is dismissed.

Given all of the above it must be noted that the tenant has come perilously close to losing their tenancy.

Having found the tenant has not paid the outstanding rent and was not entitled to withhold rent I find the landlord has established a monetary claim for unpaid rent to date and is further entitled to recover their filing fee.

Calculation for Monetary Order

Unpaid rent January 2017	\$7,950.00
Unpaid rent February 2017	\$7,950.00
Landlord's filing fee for the cost of application	\$100.00
Total Monetary Award / landlord	\$16,000.00

I grant the landlord a **Monetary Order** under Section 67 of the Act for the amount of **\$16,000.00**. If the tenant does not satisfy this Order the Order may be filed in the Small Claims Court and enforced as an Order of that Court.

The landlord must deduct from the Monetary Order any amount received toward satisfaction of the Order. The Monetary Order is rendered in force and enforceable for any unsatisfied balance.

Conclusion

The landlord's application in relevant part is granted and the balance of their application dismissed. The landlord is given a Monetary Order.

The tenant's application in relevant part is granted.

This Decision is final and binding on both parties.

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: February 27, 2017

Residential Tenancy Branch

