



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, OLC, RP

Introduction

A hearing was convened on March 16, 2017 in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent, for an Order requiring the Landlord to make repairs to the rental unit, and for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement.

The Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and a copy of the Ten Day Notice to End Tenancy for Unpaid Rent, dated February 16, 2017, were sent to the Landlord, via registered mail, on February 17, 2017. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On March 02, 2017 the Tenant submitted a shelter information form and 4 photographs. The Tenant stated that this evidence was left in the Landlord's mail box on February 24, 2017. The Landlord 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.

Preliminary Matter #1

The Tenant submitted 3 hand written documents and one illegible invoice to the Residential Tenancy Branch with his Application for Dispute Resolution. The Tenant stated that these documents were mailed to the Landlord with the Application for Dispute Resolution. The Landlord stated that he did not get these four pages of evidence with the Application for Dispute Resolution.

The parties were advised that I have insufficient evidence to determine whether the Tenant was telling the truth when he declared the aforementioned four documents were mailed with the Application for Dispute Resolution or whether the Landlord was telling the truth when he declared that he did not receive those four documents. The Tenant requested an adjournment for the purposes of re-serving those documents.

The Tenant was advised that the hearing would proceed and that he would be given the opportunity to testify regarding the content of any of the documents submitted to the Residential Tenancy Branch. He was further advised that if, during the hearing, the Tenant could request

an adjournment if the Tenant believed it was necessary for me to physically view one of the aforementioned documents.

At the end of the hearing the Tenant requested an adjournment for the purposes of re-serving the Landlord with the illegible invoice that had been submitted in evidence, which the Tenant stated is a rent receipt that shows he paid rent of \$522.50 on January 14, 2017. As this invoice/rent receipt appeared highly relevant to the issues in dispute, the parties were advised that the hearing was being adjourned to provide the Tenant with the opportunity to re-serve this evidence to the Landlord.

After the hearing ended and I had time to review the testimony of the parties, I concluded that an adjournment would not be necessary. As discussed in my analysis, I have concluded that this tenancy should end even if the Tenant did pay \$522.50 on January 14, 2016 as the Tenant alleges. I therefore find it is not necessary for me to physically view the illegible invoice as it would not alter my decision that the tenancy should end even if the evidence proves rent of \$522.50 was paid.

Preliminary Matter #2

Rule 6.10 of the Residential Tenancy Branch Rules of Procedure stipulate that:

- disrupting the hearing will not be permitted;
- the arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately;
- a person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing; and
- the arbitrator may proceed in the absence of that excluded party.

Both parties repeatedly disrupted these proceedings by interrupting the other party; by making highly derogatory comments about the other party, and by ignoring my directions to refrain from such conduct. At one point in the hearing I attempted to "mute" the Landlord, at which point the audio console malfunctioned and neither party could speak. After approximately 15 minutes the problem was rectified with the assistance of the operator and the hearing resumed.

After the hearing resumed the parties continued to disrupt the proceedings by making derogatory comments, however I was able to conclude the hearing without excluding either party.

Preliminary Matter #3

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application.

I find that the most urgent issue in dispute is possession in this Application for Dispute Resolution is possession of the rental unit. I will, therefore, consider the Tenant's application to set aside a Ten Day Notice to End Tenancy for Unpaid Rent at application at these proceedings.

I find that the Tenant's application for repairs is not sufficiently related to the application to set aside the Notice to End Tenancy and I will not consider that application at these proceedings. The application for an Order requiring the Landlord to make repairs is therefore dismissed, with leave to re-apply.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on January 09, 2017; that they did not sign a written tenancy agreement; and that rent is due by the 15th day of each month.

The Tenant stated that he agreed to pay monthly rent of \$610.00. The Tenant stated that he never agreed to repair the unit in exchange for reduced rent.

The Landlord stated that he agreed to rent the unit to the Tenant for \$675.00, with the understanding that the Tenant would make some repairs to the unit. He stated that the Tenant did not make any repairs so he believes the Tenant should pay the market rent for the unit, which he contends is \$800.00 per month.

The Landlord and the Tenant agree that the Landlord personally served the Tenant with a Ten Day Notice to End Tenancy, in the presence of a police officer, on February 16, 2017. The parties agree that the Notice to End Tenancy declared that the Tenant must vacate the rental unit by February 26, 2017 because the Tenant had failed to pay rent of \$800.00, which was due on February 01, 2017.

The Tenant stated that on January 14, 2017 he paid the Landlord rent of \$522.50, in cash. He stated that this rent was not a full month's rent because it was pro-rated. He stated that no rent has been paid since January 14, 2017.

The Landlord stated that the Tenant has never paid any rent and that rent should not have been pro-rated for the period between January 15, 2017 and February 15, 2017, as the Tenant occupied the rental unit for that entire month.

The Tenant submitted a receipt which he stated was provided to him by the Landlord. The copy of the receipt the Tenant provided to the Residential Tenancy Branch on February 17, 2017 was not legible. The Tenant stated that the receipt names the Landlord at the top and was initialled by both the Landlord and the Tenant.

The Landlord stated that although he was not served with this receipt as evidence for these proceedings, the Tenant did show it to him in the presence of a police officer on February 16, 2017. He stated that he did not issue this receipt, he did not sign this receipt, and that his name is misspelled on the receipt.

The Tenant stated that one of the documents he submitted to the Residential Tenancy Branch, which the Landlord does not acknowledge receiving, is a letter in which he outlines a variety of deficiencies with the unit and declares that he will pay rent if these deficiencies are repaired.

Analysis

On the basis of the undisputed evidence I find that the Landlord and the Tenant entered into a verbal tenancy agreement. When the terms of a verbal tenancy agreement are clear and where both parties agree on the interpretation of the terms, there is no reason why such terms can't be enforced. When parties dispute the terms of a tenancy agreement, verbal terms, by their nature, are difficult for a third party to interpret.

In the event that a landlord and a tenant disagree on the amount of rent that is due for the tenancy, the landlord bears the burden of providing the amount of rent due whenever the landlord wishes to end the tenancy on the basis of the unpaid rent or if the landlord wishes to apply for a monetary Order for unpaid rent.

I find, on the balance of probabilities, that the Tenant agreed to pay rent of \$675.00 per month, as the Landlord alleges. In reaching this conclusion I was heavily influenced by the shelter information form submitted in evidence by the Tenant, dated December 12, 2016, which declares that rent will be \$675.00. I find that this form corroborates the testimony of the Landlord and refutes the testimony of the Tenant, who contends that rent was only \$610.00 per month.

Section 26(1) of the *Act* authorizes a landlord to end a tenancy if rent is not paid when it is due, whether or not the Landlord complies with the *Act*. A tenant does not have the right to withhold rent simply because the tenant believes there are deficiencies with the rental unit.

On the basis of the undisputed evidence, I find that on February 16, 2017 the Tenant was personally served with the Ten Day Notice to End Tenancy, dated February 16, 2017.

On the basis of the undisputed testimony that rent was due on the 15th day of each month, I find that the Tenant was obligated to pay \$675.00 in rent on January 15, 2017 for the period between January 15, 2017 and February 14, 2017. Even if I accepted the Tenant's testimony that he paid a pro-rated portion of rent on January 14, 2017, in the amount of \$522.50, I would conclude that the Tenant still owed \$152.50 in rent that was due on January 15, 2017.

In concluding that the Tenant still owed \$152.50 of the rent that was due on January 15, 2017 I was heavily influenced by the absence of evidence that establishes the Tenant was only obligated to pay a pro-rated portion of the rent that was due on January 15, 2017. Given that the Tenant occupied the rental unit for the entire period between January 15, 2017 and February 15, 2017, it is illogical to conclude that he was entitled to a pro-rated rent reduction.

In concluding that the Tenant still owed \$152.50 of the rent that was due on January 15, 2017 I was further influenced by the absence of any evidence to show that the Tenant had the right to withhold rent for the money the Tenant spent to make emergency repairs, pursuant to section 33 of the *Act*.

Section 46 of the *Act* authorizes a landlord to end a tenancy if rent is not paid on the day it is due by serving the tenant with a Ten Day Notice to End Tenancy. As I am satisfied that rent of \$152.50 was due when the Ten Day Notice to End Tenancy was personally served to the Tenant on February 16, 2016 and there is no evidence that the outstanding debt of \$152.50 has been paid, I find that the Landlord has the right to end this tenancy pursuant to section 46 of the *Act*. As the Landlord has the right to end this tenancy pursuant to section 46 of the *Act*, I dismiss the Tenant's application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent, dated February 16, 2017.

Section 55(1) of the *Act* stipulates that if I dismiss a tenant's application to cancel a notice to end tenancy, I must grant the landlord an Order of Possession. As I have dismissed the Tenant's application to set aside the Ten Day Notice to End Tenancy, I must grant the Landlord an Order of Possession.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, 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: March 17, 2017

Residential Tenancy Branch