



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNDCT

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to cancel a Notice to End Tenancy for Unpaid Rent and for a monetary Order for money owed or compensation for damage or loss.

The male Tenant stated that on October 17, 2019 the Dispute Resolution Package was personally served to the Resident Manager. The Resident Manager acknowledged receipt of these documents.

In October of 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Resident Manager stated that this evidence was personally served to the Tenant on October 28, 2019 and it was mailed to the Tenants on October 25, 2019. The Tenants acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

In October of 2019 the Tenants submitted evidence to the Residential Tenancy Branch. The male Tenant stated that this evidence was personally delivered to the Landlord's business office on October 18, 2019. The Regional Manager acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The parties were provided with the opportunity to present relevant evidence, to ask relevant questions, and to make relevant submissions. Each person at the hearing affirmed to tell the truth, the whole truth, and nothing but the truth.

Issue(s) to be Decided

Are the Tenants entitled to a refund of an insurance/parking overpayment?
Should the Notice to End Tenancy for Unpaid Rent be set aside?

Background and Evidence

The Landlord and the Tenants agree that:

- the tenancy began on February 01, 2017;
- rent is due by the first day of each month;
- the Provincial Government pays rent, on behalf of the Tenants, directly to the Landlord;
- rent was increased to \$879.45 on February 01, 2019;
- in addition to rent the Tenants agreed to pay \$25.00 for parking and \$15.00 for insurance; and
- no rent was overdue as of February 28, 2019.

The Regional Manager stated that a Ten Day Notice to End Tenancy for Unpaid Rent, dated October 04, 2019, was posted on the door of the rental unit on October 04, 2019. The male Tenant stated that the Tenants did not locate this Notice posted on their door.

The male Tenant stated that on October 10, 2019 he received the Ten Day Notice to End Tenancy for Unpaid Rent, dated October 04, 2019, when the Resident Manager gave him a copy of it. The Resident Manager agreed that she provided the male Tenant with a copy of this Notice on October 10, 2019.

The Regional Manager stated that the Tenants made the following payments since March 01, 2019:

- March 01, 2019 - \$94.45
- March 21, 2019 - \$850.00
- April 01, 2019 - \$825.00
- April 01, 2019 - \$94.45
- April 02, 2019 – 879.45
- May 01, 2019 - \$879.45
- June 01, 2019 – \$879.45
- June 28, 2019 - \$879.45
- July 01, 2019 –\$ 879.45
- August 29, 2019 - \$879.45
- September 01, 2019 - \$879.45

- September 26, 2019 - \$879.45
- October 01, 2019 - \$879.45

The aforementioned dates and amounts were repeated back to the Regional Manager and she confirmed the information was correct.

The male Tenant stated that rent cheques were issued by the Provincial Government for this rental unit as follows:

- March 20, 2019 - \$825.00 (0837126)
- April 02, 2019 - \$879.45 (55473723)
- April 24, 2019 - \$879.45 (0966452)
- May 22, 2019 - \$879.45 (1043226)
- June 26, 2019 - \$879.45 (1118221)
- July 24, 2019 - \$879.45 (1194861)
- August 21, 2019 - \$879.45 (1272778)
- September 25, 2019 - \$879.45 (1348252)
- October 20, 2019 - \$879.45

The Tenants submitted a hand-written document which provides the cheque numbers for the above payments, which are recorded above, beside the payments.

The male Tenant and the Regional Manager agree that there was some confusion about the Provincial Government rent payment in March of 2019, so the Tenants provided the Landlord with a money order for \$850.00 on March 20, 2019. The March rent was also paid by the Provincial Government.

The Regional Manager and the male Tenant agree that they mutually agreed the \$850.00 paid by money order should be applied to future insurance and parking payments, at a rate of \$40.00 per month.

After hearing the testimony of the male Tenant, the Regional Manager stated that the Landlord did not receive the cheque that was allegedly issued on July 24, 2019.

The female Tenant stated that the Provincial Government has advised that all of the aforementioned rent cheques were cashed by the Landlord.

After hearing the testimony of the male Tenant regarding rent payments, the Regional Manager stated that some of the payments she had previously outlined were incorrect. She stated that the Landlord did not receive a payment of \$879.45 on July 01, 2019.

She stated that what she intended to say is that a credit of \$919.45 was applied to the Tenants' rent on July 01, 2019. She stated that the Landlord did not receive a payment of \$879.45 on October 01, 2019.

The Landlord submitted a ledger. The male Tenant stated that he finds the ledger very confusing.

The ledger does not provide dates of any payments made. It appears that when a payment is made it is intended to be recorded in the "Cash Received" column as a negative number (-1.00). That practice does not appear to have been consistently applied, however. In May, for example, the ledger shows that insurance and parking were paid, as the payments were recorded as of \$40.00 was paid, as it is recorded as - 15.00 and -25.00. Both parties agree these payments were not made and that a portion of the Tenants' credit was applied to the money owed for insurance and parking. This is recorded in the "cash received" column as prepaid rent of \$40.00.

Based on my understanding of the ledger, it indicates the following payments were made since March 01, 2019:

- \$944.45 paid on undisclosed date in March of 2019, leaving a balance of 0.00
- \$1,798.90 paid on undisclosed date in April of 2019, leaving a credit of \$879.45
- \$879.45 paid on undisclosed date in May of 2019, leaving a credit of \$839.45. There is a reference to "prepaid rent" of \$40.00, which means that the Landlord applied a portion of the credit to the amount due for May.
- \$1,758.90 paid on undisclosed date in June of 2019, leaving a credit of \$1,678.90
- Nothing paid in July of 2019, leaving a credit of \$759.45. There is a reference to "prepaid rent" of \$919.45, which means that the Landlord applied a portion of the credit to all of the rent, insurance, and parking due for this month.
- \$879.45 paid on undisclosed date in August of 2019, leaving a credit of \$719.45. There is a reference to "prepaid rent" of \$40.00, which means that the Landlord applied a portion of the credit to the amount due for August.
- \$879.45 paid on undisclosed date in September of 2019, leaving a credit of \$679.45. There is a reference to "prepaid rent" of \$40.00, which means that the Landlord applied a portion of the credit to the amount due for September.
- Nothing paid in October of 2019, leaving a balance owing of \$240.00. There is a reference to "prepaid rent" of \$579.45, which means that the Landlord applied a portion of the credit to the amount due for October of 2019.

A document titled "Account Explanation & Eviction Notice" was submitted in evidence. This document declares that the Landlord received:

- March 01, 2019 - \$94.45 via auto debit
- March 21, 2019 – money order for \$850.00
- April 01, 2019 - \$94.45 via auto debit
- April 01, 2019 – \$825.00 via Government cheque 857126
- April 02, 2019 - \$879.45 via Government cheque 5547372
- May 01, 2019 - \$879.45 via Government cheque 966452
- June 01, 2019 - \$879.45 via Government cheque 1043226
- June 28, 2019 - \$879.45 via Government cheque 1043226 (duplicate cheque number)
- August 29, 2019 - \$879.45 via Government cheque 127278
- September 26, 2019 - \$879.45 via Government cheque 1348252

The Tenants are seeking a refund of the \$850.00 they overpaid in March of 2019, less the monthly fee of \$40.00 that was, or should have been, applied to insurance and parking fees since April of 2019.

Analysis

On the basis of the undisputed testimony of the Regional Manager, I find that a Ten Day Notice to End Tenancy for Unpaid Rent, dated October 04, 2019, was posted on the door of the rental unit on October 04, 2019.

On the basis of the undisputed testimony of the male Tenant, I find that the Tenants did not locate the Notice that was posted on their door. I find it entirely possible that this Notice could have been removed by a third person and not located by the Tenants.

On the basis of the undisputed testimony I find that on October 10, 2019 the male Tenant received a copy of the Ten Day Notice to End Tenancy for Unpaid Rent, dated October 04, 2019, when the Resident Manager gave him a copy of it.

I find that the Resident Manager's testimony regarding the payments made since March 01, 2019 to be unreliable. I find her testimony to be unreliable, in part, because she changed her testimony regarding the dates and amounts that were paid, after I repeated her testimony back to her and she confirmed the information was correct. Although I accept that the Resident Manager was simply confused, rather than deliberately trying to mislead, the fact remains that her evidence was conflicting and, therefore, not highly reliable.

As the Resident Manager's testimony regarding rent payments is unreliable, I find that it does not help to establish that the Tenants have not paid all of the rent that is due.

I find that the male Tenant's testimony about the rent paid was consistent and direct. Although the testimony is not corroborated by any documents from the Provincial Government, I can find no reason to discount his testimony. I find the cheque numbers provided by the Tenants provide an "air of truth" to his testimony as the numbers are consistent (although not exact) with the cheque numbers provided by the Landlord.

Typically, a detailed, professional ledger is considered to be a reliable record of determining the amount of rent paid.

I find that the ledger presented as evidence in this matter is somewhat flawed. The ledger lacks important details, such as when each payment was made. It does not, for example, declare that \$94.45 was paid on March 01, 2019 and \$850.00 was paid on March 20, 2019, as declared on the "Account Explanation & Eviction Notice". Rather, it simply declares that \$944.45 was paid in March of 2019.

The ledger also does not follow basic accounting practices of simply recording the amount owed in one column, amounts paid in another column, and the current balance in another column. Rather, in some instances it records money that was not paid in the paid column (\$15.00 for insurance and \$25.00 for parking in May of 2019) and then records, in the paid column, that "prepaid rent" of \$40.00 has been applied. To be accurate, the payment of \$15.00 for insurance and \$25.00 for parking in May of 2019 should not have been recorded in the "paid column", as that money had not been received, and the \$40.00 of credit that was applied to the monthly fees should have been recorded in a different place, such as the "adjustments" column. To be even more accurate, the \$40.00 of credit should have been recorded as "prepaid fees", rather than "prepaid rent", as the parties agreed that the credit could be applied to parking and insurance, not to rent.

In spite of the flaws in the ledger, I believe that I am able to understand the entries made in the ledger.

I find that the document titled "Account Explanation & Eviction Notice" corroborates all of the payments outlined in the ledger. I find, however, that it is also flawed. Specifically, I find that it records the same cheque number for the payments the Landlord declares were received on June 01, 2019 and June 28, 2019.

In addition, the document titled "Account Explanation & Eviction Notice" provides a 6 digit cheque number (127278) for the cheque received on August 29, 2019. As most of the cheque numbers provided by the parties have 7 digits and the cheque number for this cheque that was provided by the Tenants (1272778) is similar, I find it likely that the Landlord erred in recording this number. Similarly, the Landlord provided a 6 digit cheque number for the cheque received on May 01, 2019 (966452) and the cheque number for this cheque that was provided by the Tenants (0966452) is similar. I therefore find it likely that the Landlord also erred in recording this number. Similarly, the Landlord provided a 6 digit cheque number for the cheque received on April 01, 2019 (857126) and the cheque number for this cheque that was provided by the Tenants (0837126) is similar. I therefore find it likely that the Landlord also erred in recording this number. It cannot be determined whether the correct number of this cheque is 0837126 or 0857126.

The flaws on the document titled "Account Explanation & Eviction Notice" are noted simply to establish that there are errors in the records provided by the Landlord.

The primary issue for me to determine is whether the Landlord received the rent cheque of \$879.45 that the Tenants allege was issued by the Provincial Government on July 24, 2019 (#1194861).

If I accept the Landlord's submission that the July 24, 2019 payment was not received, I must accept the Landlord's submission that the Tenants had a credit of \$679.45 on September 30, 2019. If I accept the Tenants' submission that the July 24, 2019 payment was received, I must conclude that the Landlord's records are inaccurate, and that the Tenants' had a credit of \$1,558.90 on September 30, 2019.

Section 46(1) of the *Residential Tenancy Act (Act)* authorizes the Landlord to end this tenancy if rent is not paid when it is due. When a Landlord wishes to end a tenancy for unpaid rent, the Landlord bears the burden of proving that rent is owed.

I find that the Landlord has submitted insufficient evidence to establish that the Landlord did not receive the rent cheque of \$879.45 that the Tenants allege was issued by the Provincial Government on July 24, 2019 (#1194861). In reaching this conclusion I was influenced, in part, by the numerous errors noted on the document titled "Account Explanation & Eviction Notice".

When I consider the unusual entries on the rent ledger, the errors in the document titled "Account Explanation & Eviction Notice", and the confusion of the Regional Manager during her testimony, I find it entirely possible that the Landlord did receive the Provincial Government cheque #1194861, and they simply erred in not recording the payment. In my view, the evidence presented by the Landlord demonstrates a lack of professionalism that could easily have resulted in a mistake of this nature.

As the Landlord has submitted insufficient evidence to establish that the Landlord did not receive the Provincial Government cheque #1194861, in the amount of \$879.45, I find that the Landlord has failed to establish that the Tenants did not have a credit of \$1,558.90 on September 30, 2019.

As the Landlord has failed to establish that the Tenants did not have a credit of \$1,558.90 on September 30, 2019, I find that the Landlord has failed to establish that rent was overdue on October 01, 2019. Even if rent was not paid in October of 2019, as the Landlord contends, rent would not have been overdue on October 01, 2019 as the Tenants had sufficient credit to pay all the rent and fees that were due on October 01, 2019.

As the Landlord has failed to establish that the Tenants did not pay all of the rent that was due on October 01, 2019, I find that the Landlord did not have the right to end this tenancy, pursuant to section 46(1) of the *Act*, in October of 2019.

As the Landlord has failed to establish that the Landlord had the right to end this tenancy, pursuant to section 46(1) of the *Act*, in October of 2019, I grant the Tenants' application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent, dated October 04, 2019.

On the basis of the undisputed evidence I find that the Tenants provided the Landlord with a monetary Order for \$850.00 in March of 2019; that the money was initially provided as a rent payment for March of 2019; and that rent was subsequently paid for March of 2019 by the Provincial Government, which resulted in a rent overpayment for March, in the amount of \$850.00.

On the basis of the undisputed evidence I find that the Tenants and the Landlord mutually agreed that the aforementioned \$850.00 rent overpayment should be applied to future insurance and parking payments, at a rate of \$40.00 per month.

As there is nothing in the tenancy agreement or the *Act* that requires the Tenants to pay their insurance or parking fees in advance, I find that the Landlord must return the portion of the \$850.00 rent overpayment that has not already been applied to parking and insurance fees. As the Tenants have authorized the Landlord to apply \$40.00 to parking/insurance fees for the 8 months between April 01, 2019 and November 30, 2019, I find that the Landlord had the right to apply \$320.00 of the overpayment to those fees.

As the Tenants have now requested a refund of the remaining overpayment, I find that the Landlord must return the remaining \$530.00.

Conclusion

The Ten Day Notice to End Tenancy, dated October 04, 2019, is set aside. This tenancy shall continue until it is ended in accordance with the *Act*.

The Tenants have established a monetary claim of \$530.00, which represents a rent overpayment refund, and I am issuing a monetary Order in that amount. In the event the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

In the event the Landlord does not voluntarily comply with this Order and the Tenants do not wish to enforce it through the Province of British Columbia Small Claims Court, the Tenants may deduct this amount from any rent payment(s), pursuant to section 72(2) of the *Act*.

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: November 13, 2019

Residential Tenancy Branch