



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and an agent for the tenant.

At the start of the hearing the tenant's agent identified that the tenant has a comprehension level of grade 9 and that he has Attention Deficit Hyperactive Disorder (ADHD). The tenant or the agent provided no evidence confirming a medical diagnosis or a need for the tenant to have a power of attorney or committee deal with his affairs due to any incapacitation.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for damage to the rental unit; for compensation for damage or loss resulting from the tenancy; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on September 28, 2011 for a 5 month and 1 day fixed term tenancy beginning on October 1, 2011 for a monthly rent of \$1,200.00 due on the 1st of each month with a security deposit of \$600 paid.

The landlord also submitted into evidence:

- A copy of a handwritten notice from the tenant dated December 31, 2011 stating the tenant would be vacating the rental unit effective January 31, 2012; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on January 12, 2012 with an effective vacancy date of January 22, 2012 due to \$800.00 in unpaid rent.

The landlord testified the tenant spoke with the landlord on December 30, 2011 to advise that he would be moving out of the rental unit at the end of January 2012 and that the tenant provided a written notice the following day.

The tenant's agent stated the tenant had told him that the landlord had agreed to let him give a notice to end the tenancy by issuing a notice rather than having the landlord evict him for noise problems in the month of December 2012 and that the notice was actually written by the landlord and only signed by the tenant. The landlord confirmed the notice was written by the landlord and signed by the tenant.

The landlord also testified that the tenant paid \$400.00 towards January 2012 rent but did not pay anything further for January. The tenant's agent testified the tenant told him that he had paid the landlord rent in full in cash and that the landlord did not provide a receipt to the tenant, but thought he had to vacate the rental unit because of the 10 Day Notice the landlord had issued him.

The landlord testified the last time he spoke to the tenant was on January 17, 2012 but that he had also seen the tenant on the property as late as the end of January. The landlord testified the tenant has never returned either set of keys that he has for the rental unit.

The landlord acknowledged he entered the unit in early January 2012 because of a rotten smell that turned out to be meat left on the counter and at that time he took the photographs he submitted into evidence.

Analysis

Section 45 of the *Act* allows a tenant to end a fixed term tenancy by providing the landlord with a notice of his intent to do so with an effective date no earlier than the date specified in the tenancy agreement as the end of the tenancy.

Despite the tenant's agent's testimony that the tenant only signed the notice to end the tenancy to avoid being evicted for noise problems, in the absence of any first hand evidence or testimony from the tenant or a witness to these discussions, I accept only

that the tenant provided the landlord with a notice to end the tenancy prior to the end of the fixed term.

As to the landlord's claim for unpaid rent in the amount of \$800.00 for the month of January 2012, again in the absence of any first hand testimony or evidence, I find the tenant has failed to establish that he paid rent in full for the month of January 2012, and I accept the landlord's testimony.

While Section 46 of the *Act* does stipulate that a tenant who receives a 10 Day Notice and does not dispute that notice within 5 days has been deemed to have accepted the tenancy will end by the effective date in the notice, it also states that the tenant must vacate the rental unit.

Section 37 requires a tenant who is vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

As the tenant failed to return any keys to the landlord and the tenant has left possessions in the unit, I find the tenant has been overholding, as defined in Section 57 of the *Act*. As such, in accordance with Section 57(2) the landlord has been prohibited from taking possession of the unit.

As a result and in conjunction with the tenant's notice to end the tenancy prior to the fixed term end date, I find the landlord is entitled to possession of the rental unit and the tenant is responsible for rent for the month of February 2012.

As to the landlord's claim for damage to the unit, as I have determined that the tenant still has possession of the unit, I find the landlord's Application for compensation for damage and cleaning of the rental unit to be premature. I therefore, dismiss this portion of the landlord's Application with leave to reapply.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,050.00** comprised of \$2,000.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$600.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,450.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: February 16, 2012.

Residential Tenancy Branch