



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding S.U.C.C.E.S.S.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNR, MNSD, FF

Introduction

This hearing was convened upon an application by the landlord seeking:

1. An Order of Possession;
2. A monetary Order;
3. An Order to be allowed to retain the security deposit; and
4. Recovery of the filing fee paid for this application.

Both parties appeared at the hearing of this matter.

The landlord testified that she served the tenants with the Notice to End Tenancy in person on February 7, 2013 and that she served the Application for Dispute Resolution and hearing package on BI on March 21, 2013 and on JS on March 22, 2013 both in person.

The tenant JS agreed that he was served with the Notice to End Tenancy for Cause by way of personal service on February 7, 2012³ and with the landlord's Application for Dispute Resolution on March 22, 2013 also by way of personal service.

Issues(s) to be Decided

Whether the landlord is entitled to receive an Order of Possession, a monetary order; whether the landlord should be permitted to retain the security deposit and recover the filing fee paid for this application.

Background and Evidence

The landlord submitted a tenancy agreement signed by the parties on September 14, 2011 showing that this tenancy began on October 1, 2011 at a rental rate of \$839.00

per month. The landlords testified that rent is payable on the first of each month. The tenants made separate payments of the security deposit with JS paying \$209.75 on September 16, 2011. BI's share of the deposit in the amount of \$200.00 was originally paid on April 22, 2010 and was transferred from a previous tenancy agreement he held with the landlord.

On February 7, 2013 the landlord issued and served a 1 month Notice to End Tenancy for Cause effective March 31, 2013. The landlord now seeks an Order of Possession based on that Notice which has remained undisputed.

With respect to their claim for a monetary Order in the sum of \$1,258.50 the landlords testified that the tenants did not pay all of the rent due for February 2013 and no rent at all for March 2013. The landlord is claiming rental arrears of \$419.50 for February rent and the full \$839.00 for March rent.

The landlords are also seeking to retain the security deposit of \$409.75 in partial satisfaction of the rental arrears and seeking to recover the filing fee paid for this application.

The tenant JS says he did pay his share of the rent for February and March and that he was "...looking at the receipt right now..." although a receipt was not filed in evidence. The tenant agreed that he was served with the Notice to End Tenancy on February 7, 2013 which he did not dispute. The tenant says he agreed to vacate the rental unit and he moved out on March 16, 2013 at 9 am. On Monday March 18, 2013 the tenant says he returned to the rental unit to "...look at the place..." with the landlord. The tenant says he "...left the next day..." and that was when the landlords filed their Application for Dispute Resolution.

The tenant says when he came back on March 22 the landlord served him with their Application for Dispute Resolution. The tenant says that the Application states that the landlords are required to provide a detailed calculation of the monetary Order they are seeking and he has not received that detailed calculation.

The tenant says after being served with the landlords' Application he went to the Residential Tenancy Branch and no one told him he needed to file his rent receipt in evidence or dispute the Notice he was served. The tenant commented that the Residential Tenancy Branch has lost credibility with him.

With respect to the rent receipt the Arbitrator gave the tenant the option of faxing or delivering his rent receipt at which point the tenant testified that he had no receipt. The

tenant submitted that the landlord refused to supply a receipt unless he signed a paper and he refused to sign that paper. The tenant submitted that no matter what the Arbitrator decided he would refuse to comply because the Arbitrator was not listening to him and she was just “flapping” her “gums”.

The Arbitrator encouraged the tenant to say whatever he wished to say and the tenant spoke for sometime about his past experiences with the Residential Tenancy Branch, about the unfairness of the proceedings. The tenant stopped speaking to ask if anyone was still on the line. The Arbitrator confirmed that she and the landlords remained on the line and asked the tenant if he had anything more to add, the tenant responded that he said all he had to say.

The tenant submitted that he did not know his current address to provide to the Arbitrator for the mailing of the Decision. The tenant submitted that he wanted to pick up a copy of the Decision at the landlord's office. The Arbitrator offered to leave a copy of the Decision and/or Orders for the tenant to pick up at the Residential Tenancy Branch, Burnaby Office. The tenant agreed to pick the Decision and/or Orders up at that office.

Analysis

The Notice to End Tenancy for Cause served on the tenants states, under the title “Information for Tenants who receive this Notice to End Tenancy” as follows:

- You have the right to dispute this Notice within 10 days after you receive it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. A Dispute Resolution officer may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.
- If you do not file an Application within 10 days, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page 1 of this Notice (You can move out sooner.). If you do not file an Application, move or vacate, your landlord can apply for an Order of Possession that is enforceable through the court.

Despite the provisions of Section 47(4) and (5) of the Act; despite the instructions on the Notice to End Tenancy the tenants did not file an Application seeking to dispute the Notice to End Tenancy Given for Cause.

The tenants are therefore conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit. The effective date on the Notice to End Tenancy is March 31, 2013 as that date has passed the landlord is entitled to an Order of Possession effective 2 days after service.

With respect to the landlords' claim for rental arrears while the tenant initially said he had a receipt for the rent payments he says he made for February and March, he later stated he had not received a receipt because he refused to sign a paper. The lack of evidence of payment of rent such as a receipt, cancelled cheque, money order receipt or bank statement as well as the contradictory evidence the tenant gave with respect to at first stating he was "...looking at the receipt right now..." and later stating he did not have one, leads me to prefer the evidence of the landlords who say the rent has not been paid. I will therefore find in favour of the landlords with respect to the rental arrears.

With respect to the tenant's objection that he was not provided with a detailed calculation of the amounts sought I find that the application is clear that the landlords are seeking \$1,258.50 and that given the rent arrears total this sum, a detailed calculation is unnecessary.

Having made a monetary award in favour of the landlords I will allow them to retain the security deposit they hold with respect to this tenancy. Further, given the landlords' success in this matter I will allow them to recover the filing fee they have paid.

Calculation of total Monetary Award

Rental Arrears	\$1,258.50
Less Security Deposit (no interest accrued)	-409.75
Filing Fees for the cost of this application	50.00
Total Monetary Award	\$898.75

Conclusion

The landlord is provided with an Order of Possession as set out above. This Order must be served on the tenants forthwith. This is a final and binding Order as any Order of the Supreme Court of British Columbia.

The landlord is provided with a Monetary Order as set out above. This Order is a final and binding Order enforceable as any Order of the Provincial Court of British Columbia Small Claims Division.

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: April 16, 2013

Residential Tenancy Branch

