



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, CNC, MNR, MND, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied for:

1. An Order cancelling a Notice to End Tenancy – Section 46.

The Landlord applied for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67;
3. An Order for damages to the unit – Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on February 21, 2013. The Tenant agrees that rent of \$400.00 and \$50.00 for utilities is payable each month on the first day of each month. At the outset of the tenancy the Landlord collected \$200.00 as a security deposit.

The Landlord states that the Tenant failed to pay rent for February 2014 and that on February 18, 2013 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent. The Landlord states that the Tenant paid for both February and March 2014 rent sometime in March 2014, after the Landlord served the application to the Tenant. The Landlord states that the Tenant paid cash for February 2014 and was given a receipt while no receipt was provided for March 2014. The Landlord states that although the February 2014 receipt does not indicate that rent was taken for use and occupancy only, the Landlord told the Tenant when the February 2014 rent was paid that she wanted him to move out of the unit.

The Tenant states that the February rent was not paid as the Landlord called the agency paying the Tenant's rent to inform them that the Tenant was no longer living at the unit. The Tenant states that nothing was said by the Landlord about moving out of the unit and that the Landlord agreed to accept rent on the 23rd of April 2014 for that month's rent. The Landlord states that at no time did she agree to the late payment of rent.

The Landlord claims unpaid rent. The Landlord states that the Tenant has damaged the unit and claims \$200.00.

The Landlord states that the Tenant has a friend living with him in the unit and claims \$600.00 in additional rent for the period that the friend has lived in the unit. The Tenant states that nothing in the tenancy agreement restricts additional occupants or provides for a greater amount of rent for additional occupants. The Tenant states that his friend is not living there and is only a guest approximately once a week.

Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent (the "Notice") the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. Based on the Tenant's evidence, I find that February 2014 rent was not paid until near to the end of March 2014 and that April 2014 rent is still outstanding. I also accept that the Landlord verbally informed the Tenant that the tenancy would still end despite the payment of rents. For these reasons, I find that the Notice was valid and the Tenant is not entitled to a cancellation of the Notice. I also find that the Landlord has substantiated an entitlement to an order of possession. As April 2014 rent and utilities are unpaid, I find that the Landlord is also entitled to **\$450.00**.

As the Tenant has yet to move out of the unit, the Tenant still has opportunity to leave the unit reasonably clean and undamaged. I therefore dismiss the Landlord's claim for damages with leave to reapply after the end of the tenancy. Given the lack of a written tenancy agreement and considering the Tenant's evidence in relation to a guest and the terms of the tenancy agreement, I find that the Landlord has no basis upon which to claim additional rental monies and I dismiss this claim.

As the Landlord has been successful with its application in relation to the end of the tenancy, I find that the Landlord is entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$500.00**. Deducting the **\$200.00** security deposit plus zero interests from the entitlement leaves **\$300.00** owed by the Tenant to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I **order** that the Landlord retain the **deposit** and interest of \$200.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$300.00**. If necessary, this order may be filed in the Small Claims Court 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: April 14, 2014

Residential Tenancy Branch

