



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS. AGENCIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the tenant: CNR, OLC
For the landlord: MNSD, OPR, MNR, MNDC, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) and for an order requiring the landlord to comply with the Act.

The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for money owed or compensation for damage or loss and unpaid rent, for authority to retain the tenant’s security deposit, and for recovery of the filing fee.

At the beginning of the hearing, neither party raised any issue regarding the service of the other’s application or evidence.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, respond to the other’s evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue-Tenant MS appeared 9 minutes after the hearing began. When questioned, he stated that tenant MP would not be appearing as she had an appointment. The tenant requested a 7 day adjournment in order to obtain records and to allow MP to attend the hearing.

I declined the request for an adjournment as I find the tenant presented no urgent circumstances which would require an adjournment and due to my determination that the tenant had adequate time before the hearing to obtain all his evidence.

Preliminary matter-A review of the documentary evidence submitted by the landlord shows that the listed tenant, MP, was not actually a tenant in this tenancy agreement; rather MP was approved to be an occupant only. Further to this, the landlord did not serve MP with their Notice of Hearing and application for dispute resolution and as a result of MP not being a listed tenant, I have excluded her from further consideration in this matter.

*Preliminary matter #2-*The original tenancy agreement listed three tenants; however one of the original tenants, RW, was apparently not residing in the rental unit for some time. Additionally the other listed tenant, PD, was disclosed to have vacated the rental unit approximately the end of February 2014. The landlord attempted service of their application and Notice of Hearing via registered mail to both MS, who appeared at this hearing, and PD. The mail was returned to the landlord, unclaimed. As I find that RW and PD had vacated the rental unit, I exclude them from further consideration in this matter, and further find that MS was a joint tenant, and therefore fully responsible jointly and severally for the obligations of the tenancy.

*Preliminary matter #3-*I have determined that the portion of the tenant's application dealing with a request for orders for the landlord's compliance with the Act is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant's Application and dealt only with the tenant's application to cancel a 10 Day Notice and the landlord's application seeking an order of possession for the rental unit and a monetary order.

I note that through his evidence, the tenant attempted to amend his application to seek monetary compensation. I have not considered any request from the tenant seeking monetary compensation, as the tenant may not amend his application through evidence, and the tenant is at liberty to make another application seeking such remedy.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and to recover the filing fee?

Background and Evidence

The tenancy agreement submitted by the landlord shows that this tenancy began on January 24, 2014, monthly rent is \$1050, and the tenants paid a security deposit of \$525 at the beginning of the tenancy. The tenant stated that he moved into the rental unit on February 1, 2014.

Pursuant to the Rules of Procedure, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

Landlord's application-

The landlord stated that the tenants were served with a 10 Day Notices to End Tenancy for Unpaid Rent on March 7, 2014 by attaching it to the tenants' door, listing unpaid rent of \$882.50 as of March 1, 2014. The effective move-out date listed was March 20, 2014. The tenant acknowledged receiving the Notice on March 9, 2014

The landlord asserted that since the issuance of the Notice, rent payments have been received from or on behalf of the tenants; more particularly the landlord received a payment of \$350 on March 21, 2014, and two payments of \$350 each on March 25, 2014. The landlord also submitted that two additional payments of \$350 were received on April 24, 2014, and that through the end of April 2014, the tenant had a rent deficiency of \$262.50.

The landlord referred to an updated tenant ledger sheet submitted into evidence showing the payments received.

The landlord further submitted that the acceptance of the rent payments was on a for use and occupancy only basis.

Tenant's response-

The tenant claimed that the landlord had been paid rent in full through payments from two different government agencies paying a rent subsidy. The tenant submitted that his workers at the agencies informed him that the rent cheques had been sent to the landlord and the landlord had deposited the rent cheques.

The tenant submitted that if he had additional time to obtain records, he could prove that rent had been paid.

Analysis

Landlord's Application:

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent, pursuant to section 46 of the Act. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenant disputed the Notice within business five days; however when a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

In the case before me, I find the landlord submitted sufficient oral and documentary evidence that the tenant owed the landlord rent when the Notice was issued and that he did not pay all of the rent owed to the landlord within five days of receiving the Notice.

I note that the tenant did not dispute that rent payments for each month were made in installments and were being paid as late as the 24th day of each month. The tenant was advised that rent in full was due on the first day of the month, as per the written tenancy agreement.

Therefore, I find the tenancy has ended due to the tenant's failure to pay rent and the landlord is entitled to regain possession of the rental unit.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective 2 days after service upon the tenant.

I find the landlord submitted sufficient evidence that the tenant owes the amount of \$262.50 for unpaid rent through April 2014.

I therefore find that the landlord is entitled to a monetary award in the amount of \$312.50, comprised of outstanding rent of \$262.50 through April 2014, and the \$50 filing fee paid by the landlord for this application.

Tenant's application:

Due to the above, the tenant's application for dispute resolution seeking a cancellation of the Notice is dismissed without leave to reapply as I find the 10 Day Notice to End Tenancy issued by the landlord has been supported by the landlord and is therefore valid and enforceable.

Conclusion

The landlord's application has granted.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon him, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

At the landlord's request, I allow them to retain the amount of their monetary award from the tenant's security deposit, or \$312.50, in satisfaction of their monetary award.

The tenant's application is dismissed, without leave to reapply.

The portion of the tenant's application seeking an order requiring the landlord to comply with the Act is dismissed without leave to reapply as I have granted the landlord an order of possession for the rental unit and therefore the tenancy is ending.

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: May 1, 2014

Residential Tenancy Branch

