



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, O, FF, CNR

Introduction

There are applications filed by both parties. The landlord has made an application for an order of possession and a monetary order for unpaid rent and recovery of the filing fee. The tenant has made an application to cancel a notice to end tenancy issued for unpaid rent.

Both parties attended the hearing by conference call and gave testimony. The landlord has acknowledged receiving the tenant's evidence package. The tenant states that although he received the landlord's notice of hearing package and the landlord's documentary evidence, he was not aware that he would be responding to an application filed by the landlord. I find that the landlord has been properly served with the tenant's notice of hearing and documentary evidence as per the Act. As for the landlord's claim, I find based upon the tenant's direct testimony that he did receive the landlord's notice of hearing and documentary evidence package properly as per the Act. However, the tenant has stated that he did not notice in the package that the landlord's own notice of hearing package was in the contents even though he acknowledges that he went through the landlord's documentary evidence. I find that the hearing shall proceed for both applications filed as the tenant cannot be said to not have received the notice of hearing package as it was due to the tenant's own inattention in reviewing it.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Is the tenant entitled to an order cancelling a notice to end tenancy?

Background and Evidence

This tenancy began on September 1, 2010 on a month to month basis as shown by the submitted copy of the signed tenancy agreement dated August 29, 2010. The monthly rent is \$1,000.00 payable on the 1st of each month.

Both parties also confirmed that the landlord served the tenant with a 10 day notice to end tenancy issued for unpaid rent dated April 18, 2014 by posting it to the rental unit door on April 18, 2014. The notice states that the tenant failed to pay rent of \$1,000.00

due on October 1, 2013. The landlord states that as of the date of the landlord's application \$3,400.00 in unpaid rent are in arrears. The landlord has submitted a copy of a letter showing rent owed by the tenant, \$5,000.00 consisting of \$1,000.00 for October 2013, \$1,000.00 for November 2013, \$1,000.00 for December 2013, \$1,000.00 for April 2014 and \$1,000.00 for May 2014. The landlord also states that the tenant made the following payments, \$300.00 on November 5, 2013, \$150.00 on November 8, 2013, \$100.00 on November 11, 2013, \$100.00 on November 19, 2013, \$200.00 on December 3, 2013, \$150.00 in December 2013, \$50.00 on April 16, 2014, \$350.00 on April 27, 2014 and \$200.00 on April 30, 2014. The tenant disputes this stating that he made several pre-payments for the October and November 2013 rent. The landlord disputes this. The tenant states that all payments were in cash and that he has no records other than copies of some ATM withdrawal receipts. The tenant states that he has been paying rent sporadically throughout his tenancy with the acceptance of the landlord. The tenant has submitted copies of 4 10 day notices to end tenancy issued for unpaid rent dated April 18, 2014 for February 2014, April 2014, October 2013 and November 2013. The landlord has submitted a hand written accounting of the rent arrears signed by the tenant dating from October to December 2013 as well as showing the pre-payments totalling, \$1,500.00 for July 2012 through to September 2013 @ \$100.00 per month and a one time cash payment of \$150.00.

Both parties confirmed that a mutual agreement to end the tenancy dated February 21, 2014 was signed by both parties ending the tenancy on May 31, 2014. The landlord seeks an order of possession as the tenant still occupies the rental unit and refuses to leave. The tenant seeks an order to set aside the mutual agreement as he states that he signed the agreement under duress. The tenant states that in February 2014 the tenant was issued a 10 day notice to end tenancy issued for unpaid rent and on the 5th day following service, the landlord gave the tenant a choice to sign the mutual agreement or that the landlord would seek enforcement of the 10 day notice as the tenant had failed to pay rent within the allowed time frame. Both parties have submitted identical copies of the mutual agreement to end tenancy issued for unpaid rent and have confirmed the contents to be true. The tenant seeks to set aside the mutual agreement to end tenancy as he was forced to sign. The landlord disputes this stating that the tenant was properly served with a 10 day notice for unpaid rent as he failed to pay rent and that the tenant was not forced to sign the mutual agreement to end tenancy dated February 21, 2014 as he states.

Analysis

I find based upon the undisputed testimony that the tenant was properly served with the 10 day notice to end tenancy issued for unpaid rent dated April 18, 2014. The tenant states that he is not in arrears, but has failed to provide sufficient evidence to satisfy me that rent was not paid as stated on the notice. The notice refers only to unpaid rent for April 2014 as stated opposed to the tenant's claims that this notice refers to unpaid rent for October 2013, November 2013 and April 2014. The landlord has established a claim for an order of possession as a result of a notice to end tenancy issued for unpaid rent.

A definition of duress is, “*Unlawful pressure exerted upon a person to coerce that person to perform an act that he or she ordinarily would not perform.*”

I find that the tenant has failed to provide sufficient evidence to satisfy me that he was forced to sign the mutual agreement to end tenancy dated February 21, 2014. The tenant’s claim is disputed by the landlord. On a balance of probabilities I prefer the evidence of the landlord over that of the tenant.

The landlord is granted an order of possession as a result of a notice to end tenancy. As well, the landlord is also entitled to an order of possession as a result of both parties entering into a mutual agreement to end the tenancy dated February 21, 2014 for May 31, 2014. This order must be served upon the tenant. 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.

The tenant’s application to cancel the notice to end tenancy and to set aside the mutual agreement is dismissed.

As for the landlord’s monetary claim, I find on a balance of probabilities that a claim has been established for \$3,400.00 in rental arrears. The landlord is also entitled to recovery of the \$50.00 filing fee. I grant a monetary order for \$3,450.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant’s application is dismissed.

The landlord is granted an order of possession and a monetary order for \$3,450.00.

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: June 17, 2014

Residential Tenancy Branch

