



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANDALL NORTH REAL ESTATE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR

Introduction

This hearing was initiated by way of a Direct Request Proceeding but was reconvened as a participatory hearing, as I had insufficient evidence to conclude that both Respondents entered into a tenancy agreement with the Landlord.

The reconvened hearing was held to address the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent and a monetary Order for unpaid rent.

In my interim decision I concluded that both Respondents had been served with the Notice of Direct Request Proceeding by registered mail on October 14, 2014. This was based on a Proof of Service of the Notice of Direct Request Proceeding which declared that the Notice of Direct Request Proceeding and all supporting documents were mailed to each Tenant on October 09, 2014.

At the reconvened hearing the Tenant stated that she does not recall receiving the Notice of Direct Request Proceeding and supporting documents and that she does not have those documents with her. Even if I accepted the Tenant's evidence that she did not receive the Notice of Direct Request Proceeding and supporting documents, I find it reasonable to accept the documents as evidence for these proceedings, as they have been properly served to the Tenants. A Tenant cannot avoid service of documents by opting not to retrieve mail that has been sent by registered mail.

The Landlord and the Tenant agree that notice of this hearing was provided to both Tenants by registered mail in October of 2014. The Tenant stated that she is representing the Tenant not in attendance, who is her son.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Preliminary Matter

The Landlord's Application for Dispute Resolution is amended to include all of the rent currently due, as I find the Tenant knew, or should have known, that all of the amount of rent currently due would be the subject of these proceedings, not just the rent that was due when the Landlord filed the Application.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 01, 2014 and that the Landlord and the female Tenant entered into a written tenancy agreement. The Landlord submitted a copy of the tenancy agreement, which names both Tenants, but is only signed by the female Tenant.

The Agent for the Landlord stated that he was not involved with this tenancy when it began and he does not know if the male Tenant verbally agreed with the terms of the tenancy agreement. The Tenant stated that the male Tenant did verbally agree with the terms of the tenancy agreement.

The Landlord and the Tenant agree that the tenancy agreement requires rent of \$1,200.00 to be paid by the first day of each month.

The Agent for the Landlord stated that between April 01, 2014 and November 25, 2014 money has been paid in the following manner:

- April 01, 2014 - \$600.00 for a security deposit
- April 23, 2014 - \$500.00 for rent
- June 04, 2014 - \$500.00 for rent
- June 09, 2014 - \$850.00 for rent
- July 03, 2014 - \$500.00 for rent
- July 21, 2014 - \$775.00 for rent
- August 05, 2014 - \$700.00 for rent
- September 02, 2014 - \$800.00 for rent
- September 04, 2014 - \$500.00 for rent
- October 06, 2014 - \$800.00 for rent
- November 02, 2014 - \$500.00

Total rent allegedly paid - \$6,425.00

Total security deposit allegedly paid - \$600.00

The Tenant stated that between April 01, 2014 and November 25, 2014 money has been paid in the following manner:

- April 01, 2014 - \$200.00 for security deposit
- April 01, 2014 - \$1,200 for rent
- April 22, 2014 - \$750.00, \$500.00 of which was rent and \$250.00 of which was a security deposit
- April 29, 2014 - \$850.00, \$700.00 of which was rent and \$150.00 of which was a security deposit
- May 07, 2014 - \$800.00 for rent
- May 28, 2014 - \$500.00 for rent
- May 31, 2014 - \$850.00 for rent
- June 25, 2014 - \$500.00 for rent
- July 19, 2014 - \$775.00 for rent
- July 19, 2014 - \$500.00 for rent
- August 02, 2014 - \$700 for rent
- August 02, 2014 - \$500 for rent
- September 02, 2014 - \$800.00 for rent
- September 04, 2014 - \$500.00 for rent
- October 08, 2014 - \$700.00 for rent
- November 12, 2014 - \$500.00 for rent

Total rent allegedly paid - \$10,025.00

Total security deposit allegedly paid - \$600.00

The Agent for the Landlord stated that the Tenant made at least two payments that were not honoured by her financial institution, which are not reported in the list of payments provided by the Landlord, although they may be reported in the Tenant's list of payments. The Tenant stated that she made one payment of \$700.00 that was not honoured by her financial institution.

I note that the Tenant's testimony was not given in a clear, concise manner. The Tenant appeared to confuse the dates and amounts of payments and stated on several occasions that she has difficulty with her memory. She stated that her testimony has been based on bank statements that she has in her possession.

Conversely, the Agent for the Landlord's testimony was clear and concise. He stated that his testimony has been based on a ledger that he has in his possession.

The Tenant stated that she typically pays her rent in advance and that on November 26, 2014 she paid her rent for December of 2014. The Agent for the Landlord stated that his records would not reflect such a recent payment.

The Agent for the Landlord stated that on September 04, 2014 a Notice to End Tenancy was mailed to Tenant at the rental unit, via registered mail. The Landlord submitted a copy of a Canada Post receipt that corroborates this testimony. The Notice to End Tenancy, dated September 04, 2014, which was submitted in evidence, declares that Tenant must vacate the rental unit by September 25, 2014.

The Tenant stated that she may have received this Notice but, given her failing memory, she is not certain. She stated that she did not have the Notice with her at the time of the hearing.

Analysis

On the basis of the undisputed evidence, I find that the Landlord entered into a verbal tenancy agreement with the male Tenant and a written tenancy agreement with the female Tenant.

On the basis of the undisputed evidence, I find that the tenancy began on May 01, 2014 and that rent of \$1,200.00 is due by the first day of each month. I therefore find that the Tenant was required to pay rent of \$8,400.00 for the period between May 01, 2014 and November 30, 2014.

On the basis of the testimony of the Agent for the Landlord, I find that the Tenant paid at least \$6,425.00 in rent for the period between May 01, 2014 and November 30, 2014. I find that the Tenant has submitted insufficient evidence to show that rent in excess of \$6,425.00 was paid for this period. I therefore find that the Tenant currently owes \$1,975.00 in rent for this period.

In determining the amount of rent that is due, I was influenced by the absence of evidence, such as bank statements or copies of cheques, which corroborate the Tenant's claim that she made payments that are not acknowledged by the Landlord. Whenever one party alleges a payment was made which the other party does not acknowledge receiving, the burden of proving the payment was made rests with the person who allegedly paid it.

In determining the amount of rent that is currently due, I was influenced by the Tenant's testimony that she has difficulty with her memory. I therefore find it entirely possible that she is not accurately recalling the payments that have been made.

In determining the amount of rent that is currently due, I considered the Tenant's testimony that she paid \$10,025.00 in rent for the period between May 01, 2014 and November 30, 2014. Given that this is \$1,625.00 more than is due for this period, I find her testimony lacks credibility.

Section 46(1) of the *Residential Tenancy Act (Act)* entitles landlords to end a tenancy when rent is not paid when it is due, by serving a Ten Day Notice to End Tenancy. I find that by September 04, 2014 the Tenant had only paid \$4,825.00 of the \$6,000.00 in rent that was due between May 1, 2014 and September 02, 2014. Given that I have found the Tenant's evidence regarding rent payments lacks credibility, I find it reasonable to rely on the payment amounts/dates provided by the Landlord.

In determining the amount of rent that had been paid by September 04, 2014, I considered the Tenant's testimony that she paid \$8,825.00 in rent for the period between May 01, 2014 and September 04, 2014. Given that this is \$2,825.00 more than is due for this period, I find her testimony lacks credibility.

As I have determined that rent was not paid in full by September 01, 2014, I find that the Landlord had grounds to serve the Tenant with notice to end the tenancy pursuant to section 46 of the *Act*. On the basis of the testimony of the Agent for the Landlord and the Canada Post

receipt submitted in evidence, I find that the Tenant was served with a Ten Day Notice to End Tenancy, by registered mail, on September 04, 2014.

As the Tenant had not paid all of the rent that was due by September 01, 2014 and the Tenant had been served with a Ten Day Notice to End Tenancy in accordance with section 88 of the *Act*, I find that the Landlord is entitled to end this tenancy pursuant to section 46 of the *Act*. I therefore grant the Landlord an Order of Possession.

In determining this matter I note that there is no evidence to show that the outstanding rent had been paid within five days of receiving the Ten Day Notice to End Tenancy.

Conclusion

The Landlord has been granted an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$1,975.00 in unpaid rent and I grant the Landlord a monetary Order for this amount. In the event the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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: November 27, 2014

Residential Tenancy Branch

