



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Top Vision Realty Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the tenant: CNR, MT, FF
For the landlord: OPR, MNR

Introduction

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

The applicant “PR” (hereafter “applicant”) applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”), for an order granting more time to make an application to cancel a notice to end tenancy, and for recovery of the filing fee paid for this application.

The landlord applied for an order of possession for the rental unit due to unpaid rent and a monetary order for unpaid rent against the tenant “OR”.

The landlord attended the hearing; the applicant did not attend.

The landlord testified that the tenant/respondent named in their application, “OR”, was served with their application for dispute resolution and notice of hearing by registered mail on February 16, 2015. The landlord provided testimony of the tracking number for the registered mail.

I will reserve my findings on service of the landlord’s application and standing of the parties later in this Decision.

The landlord was provided the opportunity to present his evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence 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.

Issue(s) to be Decided

Is the applicant entitled to cancellation of the Notice?

Is the landlord entitled to an order of possession for the rental unit and a monetary order for unpaid rent?

Background and Evidence

The written tenancy agreement submitted by the landlord shows that a tenancy was formed between the landlord and respondent/tenant OR, for a beginning date of October 1, 2014, and monthly rent of \$825.00, due on the 1st day of the month.

The landlord submitted that they did not receive the monthly rent for January 2015, on January 1, and later on in January, when attempting to collect the rent, the landlord was informed by applicant PR that the respondent/tenant OR, his mother, had died in December 2014. Thereafter the applicant PR paid a sum of \$400.00 in January towards rent that was due, according to the landlord.

The landlord submitted that he served the Notice in question on February 2, 2015, by attaching it to the rental unit door on February 2, 2015, listing unpaid rent of \$825.00 as of February 1, 2015. The landlord submitted a copy of the Notice.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within 5 days. The Notice also explained that alternatively the tenant had 5 days to dispute the Notice by making an application for dispute resolution.

The landlord submitted that he knew PR resided in the rental unit with his mother, OR, during the tenancy but was informed by OR she did not know how long her son would be living there. The landlord confirmed that PR was an adult and that he considered PR an occupant in the rental unit, and that a tenancy was not formed by the acceptance of the partial payment of rent that was owed by OR.

The landlord submitted further that the monthly rent for February or March has not been paid; however, the landlord's monetary claim is \$825.00 for unpaid rent for February, as listed on the Notice.

Analysis

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

Landlord's application-

Section 1 of the Act provides definitions, and in this case, the relevant definition states that a tenant includes the estate of a deceased tenant.

I accept the tenant OR is now deceased, and that the applicant, PR, has continued residing in the rental unit, although I find his status is an occupant. Therefore, pursuant to section 64 of the Act, I find it appropriate to and I therefore amend the landlord's application to list the Estate of OR as the tenant. I further find it appropriate to and I therefore order that the Notice issued by the landlord be amended, pursuant to section 68 of the Act, to include and list the Estate of OR as the tenant.

In addressing the landlord's service of their application for dispute resolution and notice of the hearing, based upon the undisputed evidence of the landlord, I find the landlord submitted sufficient evidence to show that the Estate of the tenant was served notice of the landlord's hearing and the landlord's application as required by section 89(1) of the Act.

In the case before me, I find the landlord submitted sufficient evidence that the Estate of the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, did not pay the outstanding rent within 5 days of receiving the Notice and did not vacate the rental unit. I find the Estate of the Tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

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 Estate of the Tenant. The order of possession is enclosed with the landlord's Decision. Should the Estate of the Tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon them, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

I find landlord submitted sufficient evidence that the Estate of the Tenant owed the amount of \$825.00 for unpaid rent for February 2015.

I therefore find that the landlord is entitled to a monetary award in the amount of \$825.00, as claimed. I grant the landlord a final, legally binding monetary order for the amount of \$825.00, pursuant to section 67 of the Act, which is enclosed with the landlord's Decision.

Should the Estate of the Tenant fail to pay the landlord this amount without delay after the order has been served upon them, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

Applicant's application-

In the case before me, the undisputed evidence of the landlord and the evidence of the applicant demonstrate that the applicant was not a tenant and therefore I find he had no standing to bring forth this application, as he is an occupant only, with no tenancy established. Additionally, in the absence of the applicant to present his claim, pursuant to section 10.1 of the Rules, I dismiss the applicant's application, without leave to reapply.

Conclusion

The landlord's application for an order of possession for the rental unit and a monetary order is granted.

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

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: March 5, 2015

Residential Tenancy Branch

