



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that the Application for Dispute Resolution and the Notice of Hearing for each Tenant was mailed, in one package, to the rental unit. The Tenant stated that he received this package and that he showed the documents to the other Tenant, who is his son.

On the basis of the undisputed evidence, I find that the Application for Dispute Resolution and the Notice of Hearing have been served to the Tenant who attended the hearing, in accordance with section 89(1)(c) of the *Residential Tenancy Act (Act)*. On the basis of the testimony of the Tenant in attendance at the hearing, I find that these documents have also been served to the other Tenant, in accordance with section 71(2)(c) of the *Act*; however the other Tenant did not attend the hearing.

The Landlord submitted documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Agent for the Landlord stated that these documents were not served to the Tenant. As they were not served to the Tenant, they were not accepted as evidence for these proceedings.

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

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on March 01, 2015;
- the Tenant agreed to pay monthly rent of \$650.00 by the first day of each month; and
- the Tenant paid a security deposit of \$325.00.

The Agent for the Landlord stated that the Tenant did not pay any rent for April, May, or June of 2015. She stated that prior to these months the rent has always been paid by cash and that a receipt has been provided.

The Tenant stated that he paid his rent on April 01, 2015 and May 01, 2015. He stated that he has always been paid by cash and has been given a receipt for all of his payments, with the exception of the payment made on April 01, 2015. He stated that when he paid his rent on April 01, 2015 the Landlord told him she did not have a receipt book so she could not provide him with a receipt.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent was posted on the door of the rental unit on April 01, 2015 and that the Landlord photographed the Notice after it was posted on the door. The Landlord did not provide the Residential Tenancy Branch with a copy of the Notice to End Tenancy that was posted on April 01, 2015, nor did she submit a photograph of the posted Notice. The Tenant stated that he did not receive this Notice.

The Agent for the Landlord stated after learning that the Ten Day Notice to End Tenancy could not be served until after April 01, 2015, a second Ten Day Notice to End Tenancy for Unpaid Rent was posted on the door of the rental unit on April 11, 2015. She stated that when the Notice was posted the Tenant in attendance at the hearing opened the door, grabbed the Notice from the door; and spoke rudely to the Landlord.

The Witness for the Landlord stated that he lives next door to the Tenant and he can hear everything that occurs in the vicinity. He stated that on April 11, 2015 he heard someone tape something to the Tenant's door. He clarified that he could hear the sound of tape ripping. He stated that he did not hear any conversation and he did not hear the Tenant's door opening.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$650.00 by the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord when it is due.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. Cash receipts help to establish when a rent payment has not been made. When a landlord regularly provides receipt for cash payments there is an expectation that a tenant will produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has not been made.

In these circumstances, the parties agree that the Landlord typically provided receipts for rent payments, and that no receipt was provided for rent for April of 2015. I favour the evidence of the Landlord, who contends a receipt was not provided because rent was not paid, over the evidence of the Tenant, who contends a receipt was not provided because the Landlord did not have a receipt book. I therefore find that the Tenant must pay the Landlord \$650.00 in rent for April of 2015.

In determining this matter I was guided by *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, in which the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find the version of events provided by the Landlord to be more probable, in part, because the Landlord has demonstrated a pattern of providing receipts and did not need a receipt book to provide a receipt, given that a receipt can simply be written on a piece of paper. I therefore find it reasonable to conclude that the Landlord would have provided a receipt if a payment had been made.

I favour the evidence of the Landlord, who contends that Ten Day Notices to End Tenancy for Unpaid Rent were posted on the door on April 01, 2015 and April 11, 2015, over the evidence of the Tenant, who contends neither Notice was received. I find the version of events provided by the Landlord to be credible, in part, because the Landlord clearly wishes this tenancy to end and it is far less complicated to simply post the Notice to End Tenancy rather than providing false testimony regarding posting of the Notice.

I find the version of events provided by the Landlord to be credible, in part, because two Notices to End Tenancy were posted. The Landlord's evidence that the Notice to End Tenancy that was served on April 01, 2015 had to re-served because of premature service has a ring of truth that gives credibility to the Landlord's entire version of events. I can find no reason for the Landlord to create such a convoluted version of events if they were not true.

Conversely, I find the version of events provided by the Tenant lacked credibility. I find it is very self-serving to simply allege a cash payment has been made and that no notices have ever been received, given that the tenancy balances on these assertions. I note that the Tenant did not submit any evidence, such as a bank statement, that might corroborate his claim that rent was paid in cash on April 01, 2015.

In determining this matter I have placed no weight on the testimony of the Witness for the Landlord, as it does not serve to corroborate the testimony of the Landlord or refute the testimony of the Tenant. Had the Witness overheard the interaction between the Tenant and the Landlord, as described by the Agent for the Landlord, he would have also undoubtedly heard the door open/close and he would have heard the Tenant speak.

Although I have no reason to conclude that the Witness for the Landlord did not hear what he believed to be the sound of tape ripping, I cannot conclude that he what he heard related to the Landlord posting the Notice to End Tenancy on the door on April 11, 2015.

Section 46(1) of the *Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the rent is due by giving a notice to end tenancy. Section 46(2) of the *Act* stipulates that a notice to end tenancy under this section must comply with section 52 of the *Act*.

Section 52 of the *Act* stipulates that to be effective a notice to end tenancy must be:

- signed and dated by the landlord or tenant giving the notice;
- give the address of the rental unit;
- state the effective date of the notice;
- except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy; and
- when given by a landlord, be in the approved form.

Although I accept that the Tenant was served with a Ten Day Notice to End Tenancy for Unpaid Rent on April 11, 2015, I must dismiss the Landlord's application for an Order of Possession. As the Landlord has not submitted a copy of the Ten Day Notice to End Tenancy, I find that I have insufficient evidence to conclude that the Notice complies with section 52 of the *Act*.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$700.00, which is comprised of \$650.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of

the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$325.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$375.00. In the event that 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.

The Landlord retains the right to serve the Tenant with another Ten Day Notice to End Tenancy if the Tenant does not pay all the rent that is currently due, including the \$375.00 in rent for April that is outstanding.

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 04, 2015

Residential Tenancy Branch

