



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR OPC MNR MNSD MNDC FF
For the tenant: MT CNR

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 landlord applied for an order of possession for unpaid rent or utilities and for cause, for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for authorization to keep all or part of the tenant’s security deposit, and to recover the cost of the filing fee.

The tenant applied for more time to make an application to cancel a notice to end tenancy and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”).

The tenant, the landlord, a witness for the landlord and an agent for the landlord (the “agent”), attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

Both parties confirmed receiving the application, notice of hearing and supporting documents from the other party prior to the hearing, and that they had the opportunity to review that evidence prior to the hearing. I find the parties were sufficiently served in accordance with the *Act*.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

During the hearing, the tenant disconnected from the hearing twelve minutes into the hearing, due to what the tenant described was a lack of cell phone minutes on his cell phone. The tenant then reconnected into the hearing two minutes later and remained connected for the remainder of the hearing, which lasted a total of twenty-four minutes.

Although the tenant applied for more time to make an application to dispute the 10 Day Notice, and the tenant admitted during the hearing that he does not ever check his mail as he has “no need to”, the tenant testified that his lawyer was also served with the 10 Day Notice dated August 5, 2015, and that he received the 10 Day Notice through his lawyer on Monday, August 10, 2015. In the interests of fairness, I will accept that the tenant received the 10 Day Notice on August 10, 2015, and disputed it on August 14, 2015 which is within the five day timeline provided for under section 46 of the *Act*. As a result, I do not find it necessary to consider the tenant’s application for more time to make an application to cancel a notice to end tenancy.

Issues to be Decided

- Should the 10 Day Notice dated August 5, 2015, be cancelled?
- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant’s security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on February 15, 2015. Monthly rent in the amount of \$1,400 was due every month; however the parties disputed the day on which it was due. The landlord referred to the written tenancy agreement, which was also submitted by the tenant, which indicates that rent was due on the 1st day of each month. The tenant testified that he had a verbal “mutual agreement” with the landlord that rent was due on the 15th day of each month, which the landlord denied. The landlord stated that even though the tenant

paid his rent late, he would accept payment but that by accepting the payment was never an agreement by the landlord that the tenant could pay the rent late each month.

The landlord's monetary claim is for \$2,800 comprised of unpaid rent for the month of August 2015 of \$1,400, and \$1,400 owing for loss of rent for September 2015. The tenant admitted that he did not pay rent on the first of the month. The tenant provided no supporting documentary evidence to support that rent was paid for the month of August or September 2015. The landlord testified that no rent for the month of August or September 2015 has been paid.

A copy of the 10 Day Notice dated August 5, 2015 was submitted in evidence. The 10 Day Notice indicates that \$1,400 in unpaid rent was due on August 1, 2015, and includes an effective vacancy date of August 20, 2015. The tenant has provided no documentary evidence to support that any rent for August or September 2015 has been paid. The tenant continues to occupy the rental unit. The landlord verbally requested an order of possession.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

I find the tenant has provided insufficient evidence to support that rent for August and September 2015 has been paid. The onus of proof is on the tenant to prove that he did pay rent when they apply to dispute a 10 Day Notice. I find that rent was due on the 1st day of each month as indicated on the written tenancy agreement and that the written terms of the tenancy agreement take precedence over a disputed verbal agreement on when rent was due. As a result, **I dismiss** the tenant's application to cancel the 10 Day Notice dated August 5, 2015. I find that the 10 Day Notice dated August 5, 2015, is valid and I uphold the 10 Day Notice. I do not find it necessary to consider the 1 Month Notice as a result as the tenancy ended based on the 10 Day Notice being upheld.

Order of Possession – The effective vacancy date of the 10 Day Notice was August 20, 2015, which has passed and the tenant continues to occupy the rental unit. Given the landlord's oral request for an order of possession and his application for same, and pursuant to section 55 of the *Act*, once I dismissed the tenant's application to cancel the 10 Day Notice and I upheld the landlord's 10 Day Notice, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenant.

Claim for unpaid rent and loss of rent – I find that the tenant failed to pay August 2015 rent of \$1,400 and that the landlord suffered a loss of rent of \$1,400 for the month of September 2015. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the 1st day of each month. The tenant continues to occupy the rental unit. The landlord will not regain possession of the unit until after service of the order of possession. I find the landlord has met the burden of proof and **I find** the landlord has established a monetary claim of **\$2,800** comprised of unpaid rent and loss of rent as claimed.

As the landlord has succeeded with their application, **I grant** the landlord the recovery of their **\$50** filing fee.

Monetary Order – **I find** the landlord has established a total monetary claim of **\$2,850** comprised of \$2,800 in unpaid rent and loss of rent, plus the recovery of the \$50 filing fee.

I ORDER the landlord to retain the tenant's full security deposit of \$700 in partial satisfaction of the landlord's monetary claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$2,150**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenant's application to cancel the 10 Day Notice is dismissed, without leave to reapply, due to insufficient evidence.

The landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. The tenant must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has established a total monetary claim of \$2850. The landlord has been ordered to retain the tenant's full security deposit of \$700 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount

of \$2,150. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 18, 2015

Residential Tenancy Branch

