



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DS 15TH AVENUE DEVELOPMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB MNR FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession due to the tenant breaching an agreement with the landlord, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

Two agents for the landlord (the "agents") and the tenant attended the teleconference hearing. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of their testimony is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to money owed or compensation for damage or loss under the *Act*?

Preliminary and Procedural Matters

Firstly, while the agents called into the hearing promptly at 11:00 a.m. Pacific Time on Tuesday, January 24, 2017 which was the start time of the hearing, the tenant did not call into the hearing until six minutes after the hearing commenced and evidence was being presented by the landlord. Rule 7.1 of the Residential Tenancy Branch Rules of Procedure states:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

Given the above, as the tenant called into the hearing late the testimony already provided by the agents had already been considered by the time the tenant had joined the hearing late. There is no requirement for the undersigned to start the hearing over again due to a party being late to call into the hearing.

Secondly, upon entering the conference call hearing late, the tenant immediately requested an adjournment due to an "emergency". The tenant described the "emergency" as he "needed to get a lawyer." After considering Rule 7.9 of the Rules of Procedure which sets out the criteria for an adjournment and considering that an order of possession and unpaid rent were matters before me, I

advised the tenant that his request for an adjournment was being denied as I find the tenant would have had ample opportunity to arrange for legal representation prior to the hearing.

Background and Evidence

A copy of a fixed term tenancy agreement was submitted in evidence. The tenancy agreement indicates the tenancy start date as October 1, 2016 and the end date as October 31, 2016 with the following text "FIXED TERM TENANCY TENANT AGREES TO MOVE OCT 31ST UNLESS RENEWED." The rent for October is listed as \$1,700.00.

The agents stated that there was no renewal of the fixed term tenancy proposed or entered into between the parties and that the tenant continues to over-hold the rental unit and has paid no money for use and occupancy since October 2016. The agents affirmed that the landlord has suffered a loss of rent of \$1,700.00 for each of the months of November and December of 2016, and for January 2017. The agents are seeking an immediate order of possession and a monetary order for unpaid rent, loss of rent and to recover the cost of the filing fee.

The tenant testified that he paid rent for every month but did not submit any receipts in evidence to support his testimony. The agents stated there no receipts were issued for November, December or January as the tenant has not paid any rent or money for use and occupancy and is over-holding the rental unit.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of possession – I find the tenancy agreement clearly indicates that the tenancy is a fixed term tenancy that ended on October 31, 2016 that required vacant possession of the rental unit as of October 31, 2016 which the tenant breached. Also, I find there is insufficient evidence before me that the parties entered into another tenancy after the fixed term tenancy expired and that the tenancy did not revert to a month to month tenancy. Therefore, I grant the landlord an order of possession **effective two (2) days** after service on the tenant. I find the tenancy ended on October 31, 2016 and that the tenant has been over-holding the rental unit since that date.

Claim for unpaid rent/loss of rent – I find the tenant has provided insufficient evidence to support that rent was paid or that money for use and occupancy was paid for any other month other than October 2016. As a result, I prefer the testimony of the agents over that of the tenant and I find that the landlord suffered a loss of rent of \$1,700.00 for the months of November 2016, December 2016 and January 2017 inclusive for a total of \$5,100.00 in loss of rent.

As the landlord's application had merit, I grant the landlord the recovery of the filing fee in the amount of **\$100.00**. Given the above, I find the landlord has established a total monetary claim of **\$5,200.00** as described above.

Conclusion

The landlord's application is successful.

The landlord is granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a monetary order in the total amount of \$5,200.00. 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: January 24, 2017

Residential Tenancy Branch