

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNR, MT, OPR, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and a cross-application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

Does the landlord have grounds to end the tenancy?

Is the landlord entitled to a monetary order as requested?

Background and Evidence

The parties agreed that the tenancy was originally set to begin on December 15, 2008 at a monthly rate of \$1,450.00 per month. The parties further agreed that the tenant moved in on or about December 3, 2008 and that in December she paid rent for the period from December 15 – 31. The landlord claims that he permitted the tenant to move in early and that they had an agreement that she would pay an additional \$ 620 for the period from December 3 – 14. The tenant testified that the landlord permitted her to move into the rental unit early in exchange for cleaning the unit. The parties agreed that the tenant had paid rent in full for the months of January and February.

The tenant testified that the landlord agreed to reduce her rent to \$1,100.00 per month in exchange for placing boarders in the lower suite in the rental unit. The landlord agreed that there had been some discussion about placing boarders in the rental unit, but testified that the tenant refused to permit boarders in the unit and therefore the rent had not been reduced. The tenant agreed that no boarders had ever taken up residence in the rental unit.

The parties further agreed that the tenant paid \$440.00 on March 2, \$750.00 on April 7, \$400.00 on May 2 and \$400.00 on May 4. On March 3 the tenant was served with a 10-day notice to end tenancy for unpaid rent. The tenant did not make an application to dispute the notice until March 10, 7 days after she acknowledged having received the notice. When asked why she had not disputed the notice within 5 days of receiving it, the tenant did not give an answer.

The tenant seeks an order setting aside the notice to end tenancy. The landlord seeks an order of possession based on the notice and a monetary order for \$2,950 for unpaid rent for December and March and loss of income for April and May.

Analysis

First addressing the tenant's claim for an order setting aside a notice to end this tenancy, I refer to section 46(5) of the notice which provides that an application to dispute the notice must be made within 5 days of having received the notice. In this case, the tenant applied for an extension of time in which to dispute the notice. Section 66(1) of the Act provides that I may only extend the time limit where the tenant has proven that exceptional circumstances prevented her from acting within the time limit. In this case, the tenant has provided no reason why she did not act within the statutorily prescribed time limit. I find that the tenant has failed to prove that exceptional circumstances prevented her from acting within the time limit and accordingly I dismiss her application to set aside the notice. I find that the landlord is entitled to an order of possession. The tenant must be served with the order. If the tenant fails to comply with the order, the landlord may enforce the order through the Supreme Court of British Columbia.

As for the landlord's monetary claim, I find that the rent payable on the rental unit was \$1,450.00 per month. Although there may have been an agreement that the rent would be reduced if boarders began living in the rental unit, it is clear that no boarders were taken in, which would have had to happen in order to trigger the rent reduction. I find that the landlord has received \$1,990.00 in rent for the months of March and April. I find that the landlord is entitled to recover \$910.00 for unpaid rent for the month of April and I award the landlord that sum. I further find that the landlord is entitled to recover loss of

income for the month of May in the amount of \$1,450.00 as I find it is unlikely that the landlord will be able to re-rent the unit for any portion of the month of May. The landlord's claim for rent for December is dismissed. I am unable to find that an agreement existed that the tenant pay for the time she occupied the unit prior to December 15. It stands to reason that if this were the case, the landlord would have demanded payment well before his application which was made in mid-April and that this amount would have been included on the notice to end tenancy served in March.

I find that the landlord has established a claim for \$2,410.00 which represents \$910.00 in unpaid rent for April, \$1,450.00 in loss of income for May and the \$50.00 filing fee paid to bring this application. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession and a monetary order for \$2,410.00.

Dated May 07, 2009.