



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, MNSD, CNR, CNC OPB, FF

Introduction

This was a cross-Application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Unpaid Rent and breach of an agreement with the landlord, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied to cancel a Notice to End Tenancy for Cause, a Ten Day Notice to End Tenancy for Unpaid Rent and for more time to make an application to cancel a Notice to End Tenancy.

The landlord stated that on April 10, 2010, he personally served the tenant, at the rental unit with his maintenance person present as a witness, with copies of the Application for Dispute Resolution and Notice of Hearing.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenant did not appear at the hearing to respond to the landlord's Application or to present testimony in support of her Application.

Preliminary Matter

The landlord's Application was amended to reflect the request for an Order of possession based upon the 10 Day Notice to End Tenancy for Unpaid Rent and the 1 Month Notice to End Tenancy for Cause. The landlord selected a request for an Order of possession as the result of a breach of the tenancy agreement; which he took to mean unpaid rent. Further, the tenant's Application requested cancellation of the Notices issued for cause and unpaid rent; which confirm that the tenant was aware of the Notices and their possible impact.

The landlord withdrew the portion of his monetary claim beyond the sum equivalent to the deposit paid.

As the tenant did not attend this hearing, I found that her Application was dismissed.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent and/or cause?

Is the landlord entitled to a monetary Order?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on February 1, 2010. A deposit in the sum of \$187.50 was paid directly to the landlord by a government Ministry. The tenant was to pay \$750.00 per month if she had a roommate and \$500.00 per month if she was alone.

The landlord stated that even though the tenant has had someone living with her he verbally agreed to set the rent at \$500.00 per month to the tenant.

The landlord received \$375.00 in direct payments for February, March and April, 2010. He has not received the balance owed in the sum of \$125.00 per month for each of the three months. The landlord is requesting an Order of possession and retention of the deposit in satisfaction of his claim for compensation.

Reference was made to the shelter information document submitted by the tenant, which confirmed the payment of the deposit and rent of \$750.00 per month.

The landlord stated that on March 2, 2010, a Ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of March 12, 2010, was personally served to the tenant at her rental unit. The landlord served this document. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$250.00 within five days after the tenant is assumed to have received the Notice. The Notice also indicated that the tenant is presumed to have accepted that the tenancy is ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant applied for dispute resolution on March 12, 2010, indicating that she received the Notice on March 12, 2010; the tenant made application for more time to make an Application.

A 1 Month Notice to End Tenancy for Cause was issued on February 25, 2010, and personally served to the tenant by the landlord on that date. The Notice indicated that the tenant has been repeatedly late paying rent.

Analysis

In the absence of evidence to the contrary, I find that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent that required the tenant to vacate the rental unit on March 12, 2010, pursuant to section 46 of the Act. The tenant failed to attend this hearing to support her submission that she was not served with the Notice until March 12, 2010. Even if the tenant had appeared at the hearing my finding would not be altered, as the tenant has confirmed receipt of the Notice and there is no evidence before me that she has paid the rent arrears.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenant did not attend this hearing to support her Application disputing the Notice; therefore, I find that her Application is dismissed and, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$125.00 for February, March and April each, and that the landlord is entitled to compensation. As the landlord has requested compensation only in the amount equivalent to the deposit paid, I find the landlord is entitled to compensation in the sum of \$187.50. I find that the balance of the claim is dismissed.

In relation to the 1 Month Notice to End Tenancy for Cause; repeated late payment of rent can be found after a tenant has been late paying rent on at least 3 occasions. At the time that Notice was issued, on February 25, 2010, the tenant had only been late paying her rent on one occasion. Therefore, I find that the 1 Month Notice to End Tenancy for cause is of no force or effect.

Conclusion

The landlord has been granted an Order of Possession that is effective two days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$187.50, which is comprised of unpaid rent. The landlord will be retaining the tenant's security deposit in the amount of \$187.50, in satisfaction of the monetary claim.

The balance of the monetary claim is dismissed.

The 1 Month Notice to End Tenancy for Cause is of no force or effect.

The tenant's Application is dismissed.

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: April 28, 2010.

Dispute Resolution Officer