

DECISION

Dispute Codes OPB, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call on this date to deal with an application by the landlord for an Order of Possession for breach of an agreement with the landlord, for a monetary order for unpaid rent, for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim, and to recover the filing fee from the tenant for the cost of this application.

Both parties gave affirmed evidence and were given the opportunity to cross examine each other on their evidence. The landlord also called a witness who was subject to cross examination by the tenant.

At the outset of the hearing, the name of the respondent (tenant) was amended with the consent of both parties. That amended name appears on the frontal page of this Decision.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for a breach of an agreement?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

This tenancy began on April 12, 2004. On August 5, 2008 the building was sold and a new tenancy agreement was prepared and signed by the parties. The landlord's agent testified that the parties also signed an addendum to the tenancy agreement on January 13, 2010, a copy of which was provided in advance of the hearing. That addendum shows that the tenancy is for a fixed term which expired on April 30, 2010, and that at the end of that fixed term, the tenant is required to vacate the unit.

Rent in the amount of \$643.07 is payable in advance on the 1st day of each month. The landlord collected a security deposit from the tenant in the amount of \$275.00 on April 12, 2004, however the tenancy agreement shows that the amount paid was \$310.00. The landlord's agent testified that an error appears in the tenancy agreement and the amount actually paid was \$275.00. The tenant conceded to that fact, and stated that she thought the error was not an error but included interest to which she should be entitled.

The landlord's agent testified that she spoke with the tenant, told her that the owner was not prepared to renew the lease, and gave her a grace period to move out for a few days in May. She stated that she saw moving boxes at the residence of the tenant, and the tenant paid \$300.00 for over-holding. The landlord's agent gave the tenant a receipt for that showing that it was for use and occupancy only. At that point, the tenant still owed \$138.52 for rent for the month of April, and therefore \$161.48 was for over-holding, which took the tenant to the 8th day of May, 2010, but the tenant still did not move. The landlord is claiming \$1,124.66 for unpaid rent for the balance of rent owing for the month of May and full rent for the month of June, 2010. The tenant has not made any payments to the landlord for rent for June, and has not paid the balance owing for May.

The tenant testified that she had been given 2 letters by the landlord dated April 2, 2010. The first one had an error in it, and the landlord then delivered one with the error corrected. She further stated that the landlord did not give her a chance to come up with the balance due for the month of May.

The tenant further testified that she did not sign the addendum to the tenancy agreement that shows that her fixed term tenancy expired on April 30, 2010, and the signature that appears on that document has been forged, or perhaps photocopied from another document and attached as page 2 of the addendum. The tenant was not able to provide me with any evidence of any document signed by her that the landlord's agents may have been able to photocopy and attach to the addendum. She further stated that the landlord did not give her any notice or ask her to leave. She had done

some cleaning work for the landlord, and did not get paid, so she felt she should be able to stay until the money owed to her and the security deposit ran out.

The witness for the landlord testified that he went to the tenant's apartment, showed her the contract addendum that needed to be signed and she signed it in the hallway. He further testified that the signature definitely was not forged and was not copied from another document. After the signature was obtained, he took it to the office, photocopied it and mailed a copy of it to the tenant. The tenant acknowledged receiving that signed document on January 20, 2010.

Analysis

Firstly, I find that the actual amount of the security deposit paid on April 12, 2004 was \$275.00. Further, the tenant is entitled to interest on that amount from April 12, 2004 to date.

I have compared the signature of the tenant on the addendum in question to the documents that were provided in advance of the hearing. I find that the tenant did sign the addendum, and ought to have been aware that the fixed term expired on April 30, 2010 and that she was required by that contract to move by that date.

The tenant also admitted in her evidence that she did not pay the balance of the rent due for May and did not pay rent for the month of June. Therefore, the landlord is entitled to a monetary order for unpaid rent.

Conclusion

Based on the above facts I find that the landlord is entitled to an Order of Possession. The tenant must be served with the Order of Possession. Should the tenant fail to

comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As for the monetary order, I find that the landlord has established a claim for \$1,124.66 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the deposit and interest of \$284.74 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$889.92. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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 30, 2010.

Dispute Resolution Officer