

DECISION

Dispute Codes:

CNL, OLC, OPL, MNR, MNDC, FF

Introduction

This was a cross-Application hearing.

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 2 Month Notice to End Tenancy for Landlord's Use and an Order that the landlord comply with the Act.

The landlord Applied requesting an Order of possession for landlord's use of the property, a monetary Order for unpaid rent, compensation for damage or loss under the Act, and filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matter

At the start of the hearing I determined that the tenant had previously applied to cancel the Notice issued on April 1, 2010 and that her Application had been dismissed. Therefore, the tenant's Application has been previously decided and cannot be heard again.

The tenant submitted she has now moved out of the rental unit.

The landlord's evidence submission of twelve pages was submitted late to the Residential Tenancy Branch (RTB), received on July 9, 2010. The landlord submitted the evidence outside of the required 5 day timeframe, included in the Rules of Procedure. The tenant testified that she did not receive this evidence submission which the landlord testified was left out side of the tenant's door on July 5, 2010. This evidence was set aside and the landlord was at liberty to provide oral testimony in relation to this evidence.

The landlord submitted that she had applied requesting compensation for damage to the rental unit. The Application did not include a request under this category of claim, nor did it include a monetary amount claimed for damage to the rental unit.

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid rent and damage or loss under the Act?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenant had lived in the rental unit since 2000. In 2003 the landlord purchased the unit and a new tenancy agreement was signed. Rent was \$1,050.00 per month, due on the first day of each month. On October 30, 2000, the tenant paid a deposit in the sum of \$462.50.

The landlord and the tenant agree that a 2 Month Notice to End Tenancy for Landlord's Use was issued on April 1, 2010, and placed in the tenant's mail box on that date. The parties agreed that the tenant was given one month's rent compensation as required by the Act.

The landlord testified that she had been told by a RTB staff member that she should not accept May, 2010, rent from the tenant unless the tenant marked the payment for use and occupancy only. The parties agreed that the tenant made attempts to pay May rent and that it was not accepted by the landlord. June rent was given as compensation, as required by the Act.

The tenant submitted that her original Application was submitted to dispute the effective date of the Notice, as the Notice indicated she must move by May 31, 2010. The tenant moved out on June 30, 2010, the date she felt the tenancy should end, based upon the Notice given. The tenant vacated the unit on June 30 and met with the landlord on July 1, 2010, when a walk-through of the unit was completed and the landlord was given the keys.

The landlord is claiming compensation for rent paid in July, as they could not give their landlord Notice, as they did not know if the tenant would move out of the rental unit and they were forced to wait for this hearing. The landlord is claiming compensation in the sum of \$1,050.00 for July rent paid.

The tenant's advocate spoke with the landlord prior to the first hearing held in May, at which time she told the landlord the Notice effective date would self-correct and that the tenant would move out on that date. The tenant stated she had also sent the landlord a text message to that effect.

The landlord stated she talk with the tenant's advocate, but that she was not told the tenant would move out on June 30, 2010.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord is entitled to unpaid rent for May, 2010. The tenant had attempted to make this payment, but it was refused by the landlord at the time. The tenant agreed that the landlord was owed rent for May and that she did not pay June, 2010, rent as she was entitled to compensation for that month.

In relation to the landlord's claim for compensation for July rent. The tenant had originally applied disputing the Notice, as she wanted the effective date changed. If the landlord had issued the Notice with a correct effective date it is likely that this dispute would not have occurred. I accept the tenant's testimony that she moved out on the effective date of the Notice and I base this decision on the fact that this was the true effective date.

I dismiss the landlord's claim for loss of July rent. The landlord has not verified that they paid rent to another landlord for that month and the landlord cannot be found to have lost revenue, as they had possession of the rental unit on July 1, and had given Notice for their own use; therefore, no rent revenue could be lost.

The landlord is holding a deposit plus interest in the sum of \$494.95 and I find, pursuant to section 72(2) of the Act, that the landlord may retain this amount in partial satisfaction of May, 2010, rent owed.

As this matter could have been resolved by the landlord issuing a Notice with the correct effective date and, as the tenant was entitled to pay rent owed for May and payment was refused, I decline filing fee costs to the landlord.

Conclusion

Based on these determinations I grant the landlord a monetary Order for \$555.05 for the balance of May, 2010 rent owed. The deposit has been applied to set-off the balance of rent owed.

In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

The landlord's claim for July rent compensation is dismissed.

I decline filing fee costs to the landlord.

The tenant's Application has been previously decided.

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: July 15, 2010.

Dispute Resolution Officer