

DECISION

Dispute Codes:

CNR

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 10 Day Notice to End Tenancy for Unpaid Rent, for compensation for the cost of emergency repairs, return of the tenant's property and to reduce rent for repairs not provided.

The landlord's Applied for an order of possession for unpaid rent, a breach of an agreement with the landlord, compensation for damage to the property, for unpaid rent, to retain the deposit paid, for compensation for damage or loss under the Act and to recover the filing fee paid.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. Several of the 4 landlord's, entered the hearing after it had commenced. The hearing process was explained, evidence was reviewed and the parties. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions during the hearing.

Preliminary Matters

The tenant testified that she received the landlord's evidence package, with the exception of a copy of the tenancy agreement. The landlord provided oral testimony in relation to the tenancy details.

The landlord withdrew the portion of their claim for compensation in relation to damages to the rental unit and damages or loss. The landlord is at liberty to reapply at a later date.

The tenant testified that she was proceeding with her Application to cancel the Notice issued for unpaid rent and that all other matters had been resolved prior to this hearing.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on July 7, 2010 be cancelled?

Is the landlord entitled to an Order of possession?

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

May the landlord retain the deposit paid?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on February 1, 2010. Rent is \$875.00 per month, due on the first day of the month. A deposit in the sum of \$400.00 was paid on February 28, 2010.

The landlord had received direct payments in the sum of \$675.00 per month, from a government agency and the tenant's daughter had paid the balance owed each month in the sum of \$200.00. In May, 2010, the landlord issued the tenant 4 receipts for the months of February to May, 2010, which the tenant needed to submit to the government agency.

The landlord has not received any rent payments for June or July.

The landlord's evidence indicated that on July 7, 2010 a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of July 17, 2010, was served by posting to the door. On July 9, 2010, the tenant Applied to cancel the Notice.

The tenant agreed that she had not paid rent for June and July as the landlord was selling the home and had told the tenant she could remain in the rental unit free of charge. The landlord disputed this and stated that the tenant had been given a letter telling her the home was listed for sale and that if it did sell the tenant would be given Notice and compensation.

The tenant acknowledged that she had changed the lock to the rental unit. Section 31 of the Act allows a tenant to change the locks, with permission of the landlord, and this did not occur. The parties agreed that the tenant will provide the landlord with a key at 7 p.m. today, as the tenant did not obtain an Order allowing her to change the locks.

Discussion occurred in relation to the landlord's right to enter the rental unit. The parties were given an explanation of section 29 of the Act, which provides:

29 (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*
 - (i) the purpose for entering, which must be reasonable;*
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;*
- (d) the landlord has an order of the director authorizing the entry;*
- (e) the tenant has abandoned the rental unit;*

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that, despite the dispute in relation to service of the tenancy agreement, that the tenant has not paid any rent for June and July.

I find, on the balance of probabilities that the landlord did not tell the tenant she could live in the unit without paying rent. The tenant has provided no evidence of an agreement allowing her to live in the unit without paying rent and her claim that the landlord would make this arrangement was not as credible as the landlords' assertion that they would not have given her permission to live rent-free. It is possible that the tenant misunderstood the information provided in relation to possible compensation required under the Act, if Notice were given due to the sale of the home.

The tenant did not dispute the testimony that her daughter was paying the balance of rent owed each month, from February to May, 2010; which supports the landlord's submission that rent was paid by a government agency in the sum of \$675.00 per month, with the additional payments made by the tenant's daughter.

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 submitted an Application disputing the Notice within the required time frame; however, the tenant has not paid the rent owed and I find that she was not relieved of this requirement. On this basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenant.

I find, pursuant to section 67 of the Act, that the landlord is entitled to compensation for unpaid June and July, 2010, rent in the sum of \$1,750.00.

I find that the landlord will retain the \$400.00 deposit paid, in partial satisfaction of the claim for compensation.

I find that the landlord is entitled to filing fee costs in the sum of \$50.00.

Conclusion

As I have determined that the tenant has failed to pay rent I find that the 10 Day Notice to End Tenancy for Unpaid Rent issued on July 7, 2010, is of full force and effect.

The tenant's Application for Dispute Resolution is dismissed without leave and, based upon the landlord's Application I have issued an Order of possession to the landlord, pursuant to section 55(1) of the Act.

I find that the landlord has established a monetary claim, in the amount of \$1,800.00, which is comprised of \$1,750.00 in unpaid June and July, 2010, rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$400.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$1,400.00**. 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.

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 30, 2010.

Dispute Resolution Officer