



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there arrears of rent and if so, how much?
3. Is the Landlord entitled to compensation for damages to the rental unit and if so, how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on or about July 15, 2009. Rent is \$520.00 per month. The Landlord said rent is payable in advance no later than the 1st day of each month. The Tenant said she has paid rent in advance no later than the 28th day of each month when she is not working and when she is working she pays on the 20th day of each month but no later than the 5th day of the month (not in advance) for which rent is due. The Tenant paid a security deposit of \$260.00 at the beginning of the tenancy.

The Parties agree that on July 3, 2010, the Landlord served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 3, 2010. The Parties also agree that the Tenant paid the rent arrears on July 13, 2010. The Tenant said she believed she had 10 days to pay the arrears because the Notice said it was a "10 Day Notice."

The Parties also agree that for approximately a 2 and ½ month period, the Tenant allowed her boyfriend to reside in the rental unit while she was not there and without the Landlord's consent. During that time, the Tenant said she believes her boyfriend damaged a back entry door and lock on a front door. The Tenant also admitted that she was responsible for a missing window screen.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount ***no later than July 8, 2010***.

I find that rent was due no later than the 1st day of each month. Notwithstanding the Tenant's evidence of when she paid rent, the weight of her evidence suggests that there was an agreement to pay rent in advance of the month for which rent was due. Although the Tenant claimed that she thought she had until July 13, 2010 to pay the overdue rent, the 10 Day Notice she received states on the 2nd page of the Notice that if the Tenant did not pay the overdue rent or apply for dispute resolution within 5 days the tenancy would end in 10 days or on the effective date of the Notice. I find that the Tenant did not pay the overdue rent within 5 days of receiving the 10 Day Notice and did not apply for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect on July 31, 2010. As the Tenant paid rent on July 13, 2010, however, I find that there are no rent arrears for July 2010 that part of the Landlord's claim is dismissed without leave to reapply.

Section 32 of the Act says that a Tenant is responsible for damages caused by his act or neglect or those of her guests but is not responsible for reasonable wear and tear. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion." Based on the evidence of both of the Parties, I find that the Tenant is responsible for compensating the Landlord for damages to a back door, a front door lock and a window screen. However, the Tenant claimed that the back door was old and rotting. Consequently, I find that the Landlord is entitled to \$50.00 to for a new window screen, \$60.00 to replace a lock and \$125.00 representing the depreciated cost of the damaged back door. As the Landlord has been successful in this matter, she is also entitled pursuant to s. 72 of the Act to recover the \$50.00 filing fee she paid for this proceeding from the Tenant.

Sections 23 of the Act requires a landlord to complete a condition inspection report at the beginning of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspection or to sign the condition inspection report. In failing to complete the condition inspection report when the Tenant moved in, I find the



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Landlord contravened s. 23 of the Act. Consequently, s. 24 of the Act says that the Landlord's right to claim against the security deposit for damages to the rental unit is extinguished and that part of her claim is dismissed with leave to reapply.

Conclusion

An Order of Possession effective July 31, 2010 and a Monetary Order in the amount of **\$285.00** have been issued to the Landlord. A copy of the Orders must be served on the Tenant; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 26, 2010.

Dispute Resolution Officer