



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, OLC, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with cross applications. The tenant applied to cancel a Notice to End Tenancy for unpaid rent and for Orders to the landlord to comply with the Act, regulations or tenancy agreement. The landlord applied for an Order of Possession for unpaid rent and for a Monetary Order for unpaid rent and authority to retain the security deposit. Both parties applied for recovery of the filing fee.

Both parties appeared at the hearing and were provided the opportunity to be heard with respect to relevant matters and to respond to the submissions of the other party. Both parties confirmed service of documents upon them.

Issues(s) to be Decided

1. Should the Notice to End Tenancy be upheld or cancelled?
2. Is it necessary to issue Orders to the landlord to comply with the Act, regulations or tenancy agreement?
3. Is the landlord entitled to an Order of Possession?
4. Is the landlord entitled to a Monetary Order for unpaid rent?
5. Is the landlord authorized to retain the security deposit?

Background and Evidence

I was provided the following undisputed testimony. There is no written tenancy agreement. On July 24, 2010 the tenant provided the landlord with three cheques

written on the tenant's boyfriend's chequing account. The tenant was provided keys to the rental unit and moved in July 25, 2010. The cheques were deposited by the landlord on July 27, 2010 and on July 30, 2010 the landlord received notification from the bank that the cheques were written on a closed account. The cheques were for the following:

\$500.00 for a security deposit dated July 24, 2010;
\$185.00 for pro-rated rent for July 2010 dated July 24, 2010; and,
\$950.00 for rent for August 2010 dated August 1, 2010.

I also heard that the landlord initially gave the tenant a letter instructing the tenant to vacate in two days. The landlord also offered the tenant the opportunity to vacate the rental unit during the August long weekend and the landlord would not pursue unpaid rent. The tenant would not vacate the rental unit and informed the landlord the landlord needed to issue a proper Notice to end Tenancy. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) and gave it to the tenant personally. The Notice indicates that the tenant failed to pay \$1,635.00 in rent as of August 1, 2010 and has an effective date of August 14, 2010. The tenant disputed the Notice on August 5, 2010.

In making an Application for Dispute Resolution the landlord claimed unpaid rent for the months of July through September 2010 as well as the unpaid security deposit. The landlord testified that the tenant did not pay rent after being served with the Notice to End Tenancy.

In making an Application for Dispute Resolution the tenant stated "I have a couple of things to be fixed that are not and I also have not received a rental agreement from the landlord". During the hearing the tenant denied that the cheques provided to the landlord were written on a closed account. The tenant claimed that she still uses the bank account and that she spoke with a bank representative who informed her that the

account is still open. The tenant acknowledged that the bank account is that of her boyfriend and that she does not hold the account jointly with him. The tenant also claimed that she tried calling the landlord after receiving the Notice and the landlord would not answer the phone. The tenant claimed to have the cash to pay the rent and that the landlord refused to take the cash.

The landlord testified that no calls were placed to the landlord's phone number by the tenant and that no messages from the tenant were received after serving the Notice upon the tenant. The landlord denied that the tenant offered to pay cash or that the landlord refuse cash payments.

At the time of filing the tenant provided a copy of the Notice served upon her as evidence for the hearing. The landlord provided copies of the three returned cheques along with the notices received from the bank advising the landlord that the cheques were written on a closed account. Both parties attempted to introduce other issues unrelated to rent to which I refused to hear or consider further.

Analysis

Under the Act a tenant must pay rent when due in accordance with the tenancy agreement. Although a landlord is required to provide the tenant with a copy of a written tenancy agreement, the definition of a tenancy agreement under the Act includes a verbal tenancy agreement. The terms of a verbal tenancy agreement are enforceable under the Act. Therefore, the tenant is obligated to pay rent in accordance with the terms of the tenancy agreement even if it is a verbal tenancy agreement.

Based upon the undisputed evidence before me it is clear to me that the verbal terms of tenancy were that the tenant would pay rent of \$185.00 for the days of occupation in July 2010 and \$950.00 on the 1st day of every month thereafter. Although the tenant argued that the cheques provided to the landlord were not written on a closed account,

in the absence of other evidence to support the tenant's assertion, I prefer the documentary evidence issued by the Bank of Nova Scotia and provided as evidence by the landlord for this hearing. Therefore, I find the tenant failed to pay rent in accordance with the terms of the tenancy agreement and the landlord was at liberty to issue the Notice to End Tenancy.

I was provided disputed verbal testimony that the tenant attempted to contact the landlord and pay cash for the unpaid rent after receiving the Notice. The tenant has the burden to prove the tenant attempted to pay rent and the landlord precluded the tenant from doing so. The tenant did not provide any documentary evidence to show she had the funds available to pay the landlord or that attempts were made to contact the landlord. Further, I noted that in making the Application for Dispute Resolution the tenant's claims related to repairs and lack of a written tenancy agreement but the tenant did not indicate that the tenant had made attempts to pay rent. Therefore, I prefer the landlord's version of events over the tenant's version.

Even if I had accepted the tenant's testimony that the landlord would not answer the tenant's phone calls, the tenant could have obtained a Money Order for the unpaid rent and mailed or delivered it to the landlord's service address as provided on the Notice in order to nullify the Notice. Yet the tenant did not do this. Therefore, I find the tenant did not pay or make every reasonable effort to pay the outstanding rent to the landlord within five days of receiving the Notice to End Tenancy.

Upon review of the 10 Day Notice and in light of the above findings, I find the amount of unpaid rent should have read \$1,135.00 on the Notice and that the failure to pay the security deposit is not unpaid rent. However, I find this error does not invalidate the Notice. Therefore, I uphold the Notice to End Tenancy and find that this tenancy ended on the effective date of August 14, 2010.

As I have upheld the Notice and the tenancy has ended, the tenant's application is dismissed in its entirety. As the tenant continues to occupy the rental unit I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant. The Order of Possession may be filed in The Supreme Court of British Columbia and enforced as an Order of that court.

I find the landlord entitled to compensation for the unpaid rent of \$185.00 and \$950.00 for July and August 2010. I further find the landlord entitled to compensation for loss of rent of \$950.00 for the month of September 2010 as the tenant has not yet vacated the rental unit. The landlord is also awarded the \$50.00 filing fee. As the cheque for the security deposit did not clear I find there is no security deposit to be retained by the landlord. Accordingly, I provide the landlord with a Monetary Order in the amount of \$2,135.00 to serve upon the tenant. The Monetary Order may be filed in Provincial Court (Small Claims) and enforced as an Order of that court.

Conclusion

The tenant's application was dismissed. The tenancy has ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenant. The landlord is also provided a Monetary Order in the amount of \$2,135.00 to serve upon the tenant.

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: September 21, 2010.

Dispute Resolution Officer