



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPC, MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Cause, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for Cause; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that they entered into a tenancy agreement that requires the Tenant to pay monthly rent of \$525.00 on the first day of each month and that the Tenant paid a security deposit of \$260.00 on July 28, 2009.

The male Landlord stated that he was washing his vehicle on August 01, 2010 when the Tenant came outside, at which time he served her with a Notice to End Tenancy for Cause. The female Landlord stated that she was watching her husband wash his car on August 01, 2010 and observed him serve the Tenant with the Notice to End Tenancy for Cause.

The Notice to End Tenancy for Cause that was allegedly served on Tenant declared that the Landlord was ending the tenancy because the tenant or a person permitted on the property has significantly interfered with or unreasonably disturbed another

occupant or the landlord and that the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant or the Landlord. The Notice declared that the Tenant must vacate the rental unit by August 31, 2010.

The Notice to End Tenancy for Cause that was allegedly served on the Tenant declared that she must move out of the rental unit by the date set out on the front page of the Notice if she does not dispute the Notice within ten days of receiving it.

The Tenant stated that she has never received a copy of the Notice to End Tenancy for Cause. She stated that she did have a heated discussion with the Landlord on August 01, 2010 while the Landlord was washing his car, however she contends that the Landlord did not serve her with a Notice to End Tenancy for Cause at that time.

The Tenant initially stated that on August 15, 2010 she gave the Landlord written notice of her intent to vacate the rental unit. The Tenant subsequently stated that she gave the Landlord written notice of her intent to vacate the rental unit on August 10, 2010. She stated that the written notice advised the Landlord she would be vacating the rental unit on August 31, 2010, although she realizes the notice should have advised him that she would be vacating on September 10, 2010.

The Landlord stated that he never received written notice of the Tenant's intent to vacate the rental unit. He declared that he spoke with the Tenant on August 31, 2010, at which time she told him that she could not move because her new rental unit was still occupied and that he agreed the Tenant could remain until September 15, 2010. He declared that the Tenant did not move on September 15, 2010 and that he agreed the Tenant could remain until September 22, 2010. He stated that he filed the Application for Dispute Resolution on September 22, 2010 after she failed to vacate on that date.

The Landlord and the Tenant agree that the Tenant only paid \$375.00 in rent for September of 2010 and that she did not pay any rent for October. She stated that the Landlord refused payment for rent from October of 2010 when it was offered to him.

The Landlord stated that neither the Tenant or a government agency offered him payment for rent for October of 2010. He stated that he was contacted by a government representative on one occasion and he advised them that the Tenant would be vacating the rental unit on September 15, 2010. He stated that he was contacted by a government representative a second time and he advised them that the Tenant would be vacating the rental unit on September 22, 2010.

The Landlord and the Tenant agree that the Landlord returned \$60.00 of the Tenant's security deposit on September 11, 2010 as she needed it to secure new rental accommodations.

Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that required her to pay monthly rent of \$525.00 on the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

The undisputed evidence is that the Tenant still owes \$150.00 in rent from September of 2010 and \$525.00 in rent from October of 2010. As the Tenant is required to pay rent while she is occupying the rental unit, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$675.00 in outstanding rent to the Landlord.

After hearing the contradictory evidence regarding service of the Notice to End Tenancy for Cause, I find that the Tenant was personally served with a Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*, on August 01, 2010. I favoured the evidence of the Landlord over the evidence of the Tenant in this regard, in part, because both the female Landlord and the male Landlord testified that the notice had been served and their evidence regarding details of the service was consistent.

I favoured the evidence of the Landlord over the evidence of the Tenant in regards to service of the Notice to End Tenancy, in part, because I found the version of events provided by the Landlord to be more probable than the version of events provided by the Tenant. In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

In determining the reasonableness of the Landlord's version of events, I find that it is unlikely that a Landlord would file an Application for Dispute Resolution seeking to enforce a Notice to End Tenancy unless they had actually served the Notice to End Tenancy on the Tenant, given that it is not difficult to serve a Notice to End Tenancy.

Conversely, I find that the Tenant would be highly motivated to deny receiving a Notice to End Tenancy as that denial would extend the length of the tenancy.

In determining the credibility of the two parties, I also considered the Tenant's statement that she served the Landlord with written notice of her intent to vacate, which is denied by the Landlord. I find that the Tenant initially stated that she served the notice on August 15, 2010 and later in the hearing she stated that she served it on August 10, 2010, which undermines her credibility.

Conversely, I find that the evidence provided by the Landlord was consistent and forthright.

In determining the credibility of the two parties, I also considered the Tenant's statement that the Landlord refused to accept payment for rent for October of 2010, which is denied by the Landlord. I find it highly unlikely that a landlord would refuse payment of rent that is due, which further causes me to question the credibility of the Tenant's evidence.

Section 47(5) of the *Act* stipulates that tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 47 of the *Act* and that the tenants must vacate the rental unit by that date unless the tenant disputes the notice within ten days of receiving it. As there is no evidence that the Tenant filed an application to dispute the Notice to End Tenancy, I find that the Tenant accepted that the tenancy ended on the effective date of the Notice to End Tenancy that was served pursuant to section 47 of the *Act*.

Section 47(2) of the *Act* stipulates that a One Month Notice to End Tenancy for Cause must end the tenancy effective on a date that is not earlier than one month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. As the Tenant is deemed to have received this Notice on August 01, 2010, and rent is due on the first of each month, the earliest effective date that the Notice is September 30, 2010.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was September 30, 2010.

On this basis I will grant the landlord an Order of Possession that is effective two days after it is served upon the Tenant.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective two days after it is served. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$725.00, which is comprised of \$675.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the unreturned portion of the Tenant's security deposit, in the amount of \$200.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$525.00. 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: October 26, 2010.

Dispute Resolution Officer