Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes   OPR, CNR, MNR, MNDC, FF

Introduction

This hearing dealt with cross applications. The tenant applied to cancel a Notice to End Tenancy for unpaid rent and a Monetary Order for compensation for damage or loss under the Act. The landlord applied for an Order of Possession and Monetary Order for unpaid rent.

The tenant did not appear at the hearing and the landlord confirmed receiving the tenant's Application for Dispute Resolution. As the landlord appeared at today's hearing prepared to deal with the tenant's application I dismissed the tenant's application without leave to reapply.

The tenant had named two respondents in her application. The second respondent requested he be removed from this proceeding as he is not a landlord for this rental unit. I granted the request in the absence of any objection from the tenant and amended the style of cause to reflect the identity of only one landlord.

The landlord also requested his application be amended to include retention of the security deposit in partial satisfaction of this claims for unpaid rent. As such a request reduces the Monetary Order that may be granted to the landlord I amended the landlord's application. The landlord was informed of his right to make a future application for damages or loss other than rent.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession?

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

Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

I was provided the following undisputed testimony. The tenancy commenced in January 2010 and the tenant paid a $450.00 security deposit. The tenant was required to pay rent of $900.00 on the last day of the month for the following month. The tenant's rent was paid by the Ministry. The landlord received $700.00 from the Ministry for July 2010, $900.00 for August 2010 and $700.00 for September 2010. The landlord personally served a 10 Day Notice to End Tenancy September 2, 2010. The 10 Day Notices indicates the tenant failed to pay $400.00 in rent as of September 2, 2010 and has an effective date of September 12, 2010. The tenant disputed the Notice on September 13, 2010 on the basis the landlord failed to repair the fridge.

The landlord is seeking recovery of unpaid rent of $400.00 for July and September 2010 in addition to $900.00 for loss of rent for October 2010. Upon enquiry, the landlord testified that he last saw the tenant at the rental unit on October 3, 2010 and he is uncertain as to whether she has since vacated.

Provided as documentary evidence by the landlord were copies of the tenancy agreement, 10 Day Notice, Proof of Service of the 10 Day Notice, cheque stub from the Ministry for August rent, a receipt issued for July's rent cheque received from the Ministry, and several previous 10 Day Notices.

I note that the tenant had also provided statements from the Ministry reflecting payment of $900.00 for the benefit month of August 2010 and $700.00 for the benefit month of September 2010.

Analysis

Where a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent or dispute the Notice. Otherwise, the tenant is conclusively presumed to have accepted the Notice and must vacate the rental unit by the effective date. I am satisfied the landlord served the tenant with a 10 Day Notice and the tenant did not pay the outstanding rent or dispute the Notice within five days. Accordingly, I find the tenancy ended on the effective date of September 12, 2010.

Since the tenant may continue to occupy the rental unit I provide the landlord with an Order of Possession effective two days after service of the Order of Possession upon the tenant. The Order of Possession may also be enforced in the Supreme Court of British Columbia as an Order of that court.

Based upon the evidence before me, I am satisfied that the tenant failed to pay $400.00 in rent for the months of July and September 2010 and the landlord is entitled to recover that amount from the tenant. I also accept that the tenant failed to vacate the rental unit when required to do so and since the tenant was still residing in the unit in October 2010 I find the landlord is entitled to recover unpaid rent of $900.00 for the month of October 2010.

As the landlord was successful with this application, I also award the filing fee to the landlord. The landlord is authorized to retain the tenant's security deposit in partial satisfaction of the rent owed by the tenant.

I provide for the landlord with this decision a Monetary Order in the amount calculated as follows:

Unpaid rent – July 2010	$ 200.00
Unpaid rent – September 2010	200.00
Loss of rent – October 2010	900.00
Filing fee	50.00
Less: security deposit	(450.00)
Monetary Order	$ 900.00

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

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 authorized to retain the security deposit and has been provided a Monetary Order for the balance of $900.00 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: October 21, 2010.

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Dispute Resolution Officer