



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, OPC, MNR, CNR, CNC, FF

Introduction

This was a cross-application hearing.

The tenant did not attend the hearing in support of her application to cancel a Notice issued for Cause. The landlord testified that she was not served with Notice of the tenant's hearing.

This hearing was also scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Unpaid Rent and cause, a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent and cause?

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

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced in October, 2010, rent is \$525.00 per month, due on the first day of the month. A deposit in the sum of \$262.50 was paid September 22, 2010.

The landlord stated that on October 25, 2010, a Notice ending tenancy for cause, which had an effective date of November 30, 2010, at 12 noon, was served by posting to the tenant's door at 15:52 hrs on October 25, 2010. The Notice indicated that the tenant had significantly disturbed or interfered with other occupants or the landlord.

On December 8, 2010, the tenant submitted an application to cancel the Notice issued for cause issued on October 25, 2010. The tenant did not request more time to cancel the Notice.

On November 2, 2010, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of November 12, 2010, was served by posting to the tenant's door with a witness present. The Notice indicated that the Notice would be

automatically cancelled if the landlord received \$525.00 within five days after the tenant is assumed to have received the Notice. The Notice also indicated that the tenant is presumed to have accepted that the tenancy is ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant paid \$356.38 rent owed for November, the landlord then agreed to apply part of the deposit toward the balance of November rent owed, which resulted in a balance of the deposit held by the landlord in the sum of \$94.08.

The landlord issued a receipt for payment to the tenant and stated the tenant was told that the tenancy would not continue, that the 1 month Notice issued had already ended the tenancy.

The tenant included a copy of the 10 day Notice with her December 8, 2010, application to cancel the 1 month Notice ending tenancy.

The tenant has not paid December 2010, rent owed and has partially vacated the rental unit. The tenant has yet to relinquish the keys to the rental unit.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the tenant received the Notice to End Tenancy for cause on October 28, 2010.

Section 47(2) of the Act stipulates that a 1 month Notice ending tenancy for cause is effective not earlier than one month after the day the Notice is served when received at least 1 day prior to the day in the month that rent is due. As the tenant is deemed to have received this Notice on October 28, 2010, I find that the earliest effective date of the Notice is November 30, 2010.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on November 30, 2010, pursuant to section 46 of the Act.

Section 47 of the Act stipulates that a tenant has ten (1) days from the date of receiving the Notice to End Tenancy to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me the tenant had applied to dispute the notice forty days after service of the Notice, but has not attended this hearing in support of her application. Therefore, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$525.00 for December, 2010, and that the landlord is entitled to compensation in that amount.

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.

Section 72(2) of the Act provides a dispute resolution officer with the ability to deduct any money owed by a tenant to a landlord, from the deposit due to the tenant. Therefore, I find that the landlord may retain the tenant's security deposit in the amount of \$94.08 in partial satisfaction of the monetary claim for December rent owed. Therefore, I find that the landlord is entitled to compensation for the balance of December, 2010, rent owed in the sum of \$430.90.

As the tenant did not attend this hearing in support of her application I find that her application is dismissed.

Conclusion

The tenant's application is dismissed.

The landlord has been granted an Order of Possession based on the 1 month Notice issued for cause that is effective 2 days after service to the tenant. 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 \$575.00, which is comprised of December, 2010, unpaid 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 balance of the tenant's security deposit in the amount of \$94.08, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$480.92. 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.

Dated: December 20, 2010.

Dispute Resolution Officer