



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

OPR, MNR, MNDC, CNR, OLC, RP, LAT, AAT, RR, FF

Introduction

This hearing was 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, a monetary Order for unpaid rent; compensation and damage and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied to cancel a Notice ending tenancy for unpaid rent, a monetary Order for the cost of emergency repairs; compensation or damage or loss; Orders that the landlord comply with the Act and make repairs; that the tenant receive an Order allowing access to the unit, that the tenant may change the locks and to reduce rent for repairs agreed upon but not completed and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution.

Both parties were present; at the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. The only evidence before me was a copy of a 10 Day Notice ending Tenancy for Unpaid Rent, issued on February 9, 2011.

Preliminary Matters

At the start of the hearing the tenant testified that she had submitted a binder of evidence to the Residential Tenancy Branch (RTB). This evidence submission was made via facsimile on March 9, 2011; no evidence from the tenant was before me and no evidence of service of this evidence to the RTB was indicated in the file before me.

The landlord testified that they had not received the evidence submission, which the tenant testified she mailed to the landlord's service address on March 8, 2011. The tenant had previously mailed a copy to the address provided on the tenancy agreement; the landlord stated they did not receive that package. The current service address

provided by the landlord is that included on the landlord's Application and the Notice ending tenancy.

Pursuant to section 2.3 of the Residential Tenancy Branch Rules and Regulations, all portions of the tenant's Application, with the exception of the request to cancel the Notice ending tenancy, was dismissed with leave to reapply.

Issue(s) to be Decided

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

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

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced December 1, 2010; there is some dispute as to whether there is a signed tenancy agreement. The rent was \$1,000.00 per month, due on the first day of each month. The parties agreed that the tenant was to pay the gas utility costs, for her separately metered unit; based on bills from the utility provider.

The tenant stated that on February 2, 2011, she paid \$400.00 toward February rent owed and that she did not pay March rent. The tenant stated that emergency repairs were required, but did not supply evidence verifying costs equivalent to the rent owed; nor did the tenant submit that any emergency costs were equivalent to the total amount of rent owed.

The landlord confirmed that the tenant had not been given any copies of utility bills but she had been told what she owed; the Notice ending tenancy issued on February 9, 2011, indicated \$300.00 utilities owed.

The tenant confirmed receipt of a ten (10) day Notice to End Tenancy for non-payment of rent, given to her via her mail slot. The landlord placed the Notice in the mail slot on February 9, 2011.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,000.00 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.

Within 5 days the tenant applied to cancel the Notice.

The tenant stated that she wished to vacate the rental unit on April 1, 2011. The landlord agreed that the tenant could remain in the rental unit until 1 p.m. on March 31, 2011.

Analysis

During the hearing I determined that the tenant understood that she had been issued a Notice ending tenancy which could result in her eviction; the tenant acknowledged receipt of the Notice and then disputed the Notice. The Notice issued by the landlord on February 9, 2011, did not include an effective vacancy date; however, section 68 of the Act provides:

68 (1) *If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that*

(a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and

(b) in the circumstances, it is reasonable to amend the notice.

(2) *Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,*

(a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or

(b) set aside or amend a notice given under this Act that does not comply with the Act.

As the tenant knew she had 5 days to pay the rent owed or dispute the Notice and, as the Notice included information that the tenant could be evicted; I find that the Notice issued on February 9, 2011, is amended to include an effective vacancy date of February 22, 2011; 10 days after the Notice was deemed served to the tenant.

I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on February 22, 2011, pursuant to section 46 of the Act.

As the tenant has not paid rent owed for February in the sum of \$600.00 and did not pay March rent owed in the sum of \$1,000.00 I will grant the landlord an Order of Possession that is effective March 31, 2011, at 1 p.m., a date established during the hearing.

I find that the tenant has not paid rent in the amount of \$1,600.00 for February and March, 2011, and that the landlord is entitled to compensation in that amount.

In the absence of evidence verifying the landlord's claim for utilities costs I dismiss the claim for utility payment.

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

The portion of the tenant's Application, outside of the request to cancel the Notice ending tenancy, has been dismissed with leave to reapply.

The landlord has been granted an Order of Possession that is effective no earlier than 1 p.m. on March 31, 2011. 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 \$1,650.00, which is comprised of unpaid February and March, 2011 rent in the sum of \$1,600.00 and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the amount of \$1,650.00. 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.

The claim for utility payment is dismissed.

Dated: March 15, 2011.

Residential Tenancy Branch