



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent, for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Are there rent arrears and if so how much?
3. Are the Landlords entitled to keep the Tenant's security deposit?

Background and Evidence

This month-to-month tenancy started on February 1, 2009. Rent is \$1,600.00 per month payable in advance on the 1st day of each month. The Parties' tenancy agreement states that as of May 1, 2009, there was a co-tenant (C.S.). The Parties' tenancy agreement states that the Tenant and her co-tenant were responsible for \$800.00 rent each and that the Tenant paid a security deposit of \$500.00 and her co-tenant a security deposit of \$400.00. C.S. moved out after approximately one month. The Landlord said C.S. gave her authorization to keep his security deposit for unpaid rent. The Tenant said another person moved in (who did not sign the tenancy agreement) and paid a security deposit of \$400.00 to the Landlord but they have since moved out and she was unsure if the Landlord still holds that security deposit or not. The Tenant admits that she is currently responsible for the full amount of the rent.

The Landlords' agent said he served the Tenant in person on May 3, 2011 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 4, 2011 and a One Month Notice to End Tenancy for Cause dated May 3, 2011. The Tenant said she was served with these documents on May 4, 2011. The 10 Day Notice alleged that rent of \$1,600.00 was unpaid as of May 4, 2011. The Tenant gave the Landlord 2 cheques in the amount of \$850.00 and \$750.00 on May 9, 2011. Consequently, the Tenant argued that the 10 Day Notice was cancelled because she paid the rent owed within the 5 days granted under the Act. The Landlords claim the Tenant's cheque for \$750.00 was returned for non-sufficient funds and that she provided the Landlords with replacement

funds by way of a bank draft on May 18, 2011. The Landlords gave the Tenant a receipt on May 19, 2011 stating that the payment was accepted for "use and occupancy only." The Parties agree that there are currently no rent arrears as the Tenant has paid rent in full for May and June 2011.

The ground stated on the One Month Notice was that the Tenant was repeatedly late paying rent. The Landlords claim that the Tenant was late paying rent for March, April and May 2011. The Tenant did not deny this but argued that one of the Landlords interfered with her roommates who then moved out thereby making it difficult to pay her rent.

Analysis

Section 46(4) of the Act says that a Tenant who receives a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities must either pay the outstanding rent or apply for dispute resolution to dispute the Notice within 5 days of receiving it. If the Tenant does not do either of these things, then pursuant to s. 46(5) of the Act the Tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and must vacate the rental unit on that date.

Similarly, s. 47(4) of the Act says that a Tenant who receives a One Month Notice to End Tenancy for Cause must apply for dispute resolution to dispute the Notice within 10 days of receiving it or pursuant to s. 47(5) of the Act the Tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and must vacate the rental unit on that date.

At the hearing, the Tenant admitted that she had not applied for dispute resolution to cancel either the 10 Day Notice or the One Month Notice. The Tenant said it was her belief that the 10 Day Notice was cancelled when she paid the outstanding rent on May 9, 2011 and it was her intention to make an oral application to cancel the One Month Notice at the hearing.

Given that the 10 Day Notice is dated May 4, 2011, I find it more likely that it was served on that day rather than on May 3, 2011 as the Landlords' agent claimed. I also find that the One Month Notice to End Tenancy for Cause likely was also served on May 4, 2011 at the same time. Consequently, the Tenant had until May 9, 2011 to either pay the outstanding rent or to apply for dispute resolution. Although the Tenant gave the Landlords 2 cheques in payment of the outstanding rent on May 9, 2011, I find that one of those cheques was returned for non-sufficient funds and as a result, I further find that rent of \$750.00 for May 2011 remained outstanding until the Tenant paid it on May 18, 2011 (after the 5 days granted under s. 46(4)). As the Tenant did not apply to cancel the 10 Day Notice and did not pay the rent arrears by May 9, 2011, she is deemed to have accepted that the tenancy would end on the effective date of the Notice.

I also find that there is no provision under the Act which allows the Tenant to make an oral application to cancel the One Month Notice at the hearing and dispense with the requirement to file and serve an application on the Landlord. In the absence of an application for dispute resolution by the Tenant to cancel the One Month Notice to End Tenancy, she is also conclusively presumed pursuant to s. 47(4) of the Act to have accepted that the tenancy will end on the effective date of that Notice (June 30, 2011).

At the hearing, I advised the Parties that the tenancy would end on the effective date of the One Month Notice however, for the reasons stated above I find that the Landlord would have been entitled to have the Order of Possession take effect earlier on the basis on the 10 Day Notice to End Tenancy for Unpaid Rent. However, the Landlords did not object to the date of June 30, 2011 and as rent has been paid to that date, the Order of Possession will take effect on that date.

As there are no outstanding rent arrears, that part of the Landlords' application is dismissed without leave to reapply. As the Landlords have been successful on their application, they are entitled pursuant to s. 72(1) of the Act to recover the \$50.00 filing fee for this proceeding.

Conclusion

An Order of Possession to take effect at 1:00 p.m. on June 30, 2011 and a Monetary Order in the amount of \$50.00 have been issued to the Landlords and a copy of the Orders must be served on the Tenant. The Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Landlords' application for unpaid rent is dismissed without leave to reapply. The Landlords' application for a loss of rental income and to keep the Tenant's security deposit is dismissed with leave to reapply. 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: June 14, 2011.

Residential Tenancy Branch