



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, OPB, MNR, MNSD, FF
Tenant: CNC, CNR, RR

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel two notices to end tenancy and reduce her rent for repairs agreed upon but not provided.

The hearing was conducted via teleconference and was attended by the landlord's agent and witness and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and for cause; to a monetary order for unpaid rent; for all or part of the pet damage and security deposits and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided are if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, to cancel a 1 Month Notice to End Tenancy for Cause, and to an order reducing rent for repairs, pursuant to Sections 32, 46, and 47 of the *Act*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by both parties on November 19, 2010 for 1 year fixed term tenancy beginning on December 1, 2010 for a monthly rent of \$800.00 due on the 1st of each month with a security deposit of \$400.00 paid on December 1, 2010. The tenant also paid a pet damage deposit on March 15, 2011 of \$200.00.

The tenant provided copies of the following Notices to End Tenancy:

- A 1 Month Notice to End Tenancy for Cause dated June 23, 2011 with an effective vacancy date of July 31, 2011 citing the tenant is repeatedly late paying rent; the tenant has allowed an unreasonable number of occupants in the unit; the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk; 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 tenant has caused extraordinary damage to the unit; tenant has not done required repairs of damage to the unit; and breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and

- A 10 Day Notice to End Tenancy for Unpaid Rent that was issued on July 5, 2011 with an incomplete effective vacancy date due to \$825.00 in unpaid rent.

The landlord provided testimony that the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent on July 5, 2011 and the 1 Month Notice to End Tenancy for Cause on June 23, 2011 by posting them on the rental unit door. The tenant acknowledges receipt of 1 Month Notice on June 24, 2011.

The tenant filed her application to dispute both Notices on July 6, 2011. The tenant testified that she paid her rent for July, 2011 to the onsite caretaker on June 22, 2011 by cash and that she did not receive a receipt. The tenant testified that she paid this on June 22, 2011 because she received the money from through Income Assistance on June 22, 2011.

The tenant testified that the landlord was never consistent in providing receipts for rent paid in cash. The landlord testified receipts are always issued when rent is paid in cash.

The landlord testified that tenants were given a letter on June 23, 2011 that the onsite caretaker would no longer be accepting rent on behalf of the landlord. The landlord's witness was the onsite caretaker and testified that the tenant did not pay him any rent on June 22, 2011 and that he at no time discussed the payment of July 2011 rent with the tenant.

The tenant confirmed that she did not discuss, after receiving the 10 Day Notice, with either the onsite caretaker or the landlord's agent her claim that she had paid rent on June 22, 2011. The tenant also stated that she contacted the Ministry of Social Development to seek funds to pay the landlord rent until this dispute had been heard.

Both parties also confirmed the tenant did not pay rent for August 2011 when it became due on August 1, 2011.

Analysis

Section 47(1) of the *Act* allows a landlord to end a tenancy for cause by issuing the tenant a 1 Month Notice to End Tenancy for Cause citing the specific causes for which the landlord seeks to end the tenancy. The Notice issued by the landlord stipulates that the tenant may dispute the Notice by filing an Application for Dispute Resolution within 10 days of receipt of the Notice.

As the tenant testified that she received the notice on June 24, 2011, the latest she could file her Application to dispute the notice was July 4, 2011. The tenant applied for dispute resolution on July 6, 2011. Section 47(5) states that should a tenant fail to apply to dispute the notice within this timeframe she is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

In relation to amounts owing to the landlord for rent and based, in part, on the landlord's submitted tenant ledger that shows the tenant never once paid rent on time and I prefer the testimony of the landlord's witness over the tenant's regarding the non-payment of July 2011 rent. I find the tenant failed to pay rent for the month of July 2011 and accept that she did not pay rent for August 2011.

As I have found the tenant has accepted the end of the tenancy, I dismiss the portion of her application seeking to reduce the rent for repairs. I note the landlord agreed in the hearing to having the tenant vacate no later than August 15, 2011.

Conclusion

I find the landlord is entitled to an order of possession effective **August 15, 2011 after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,675.00** comprised of \$1,625.00 rent and late fees owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security and pet damage deposits and interest held in the amount of \$600.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,075.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: August 04, 2011.

Residential Tenancy Branch