Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, 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, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. 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. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

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?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on November 1, 2009; a deposit in the sum of $382.50 was paid. Rent was $765.00 per month.

According to the evidence submissions, the tenant received a Notice of Rent Increase, effective November 1, 2010, raising rent to $785.00; and a Notice effective November 1, 2011, increasing rent to $800.00.

The landlord stated that on October 2, 011, at 5 p..m., with another manager present as a witness, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of October 12, 2011, was served by posting to the tenant's door.

The Notice indicated that the Notice would be automatically cancelled if the landlord received $765.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy is ending and that the tenants 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 stated she did not receive a copy of the 10 Day Notice EndingTenancy until she was served the hearing package, which arrived via registered mail on October 19, 2011. The tenant confirmed that she normally pays rent by placing a money order through the landlord's mail slot. Somehow the October money order went missing; then tenant did not pay November rent owed, as the landlord told her to wait for the hearing. The tenant stated that the landlord refused to accept rent; however, the tenant confirmed rent was not left in the mail slot.

The landlord stated that she does not make decisions that would allow her to tell a tenant not to pay rent that was due; whether or not a hearing has been scheduled. The landlord stated that on October 19, 2011, she did receive a note from the other co-tenant asking if he paid the rent would they still be evicted.

Analysis

In the circumstances before me, I find the version of events provided by the landlord to be highly probable given the conditions that existed at the time the Notice was issued. Considered in its totality, I favour the evidence of the landlord over the tenant. It is not reasonable to accept the tenant's submission that the landlord told her not to pay rent that was due.

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 on October 5, 2011.

Section 46(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on October 5, 2011, I find that the earliest effective date of the Notice was October 15, 2011.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier that the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was October 15, 2011.

Even if I were to find that the tenant did not receive the Notice that was posted to the door of the rental unit; there is no reasonable explanation as to why the tenant did not pay rent in full within 5 days of October 19, 2011; the date she submits she first saw the Notice. If the tenant had paid the rent owed in full and made the submission that October 19, 2011, was the first time she had seen the Notice; I would find that the tenancy had been reinstated. Rather than dispute the Notice or pay the rent within 5 days of October 19, 2011; the tenant did not pay November, 2011, rent due either.

Therefore, in the absence of evidence to the contrary, I accept the landlord's testimony over that of the tenant's and find that the tenants were served with a Notice to End Tenancy that required them to vacate the rental unit on October 15, 2011, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenants did not pay the rent owed and did not dispute the Notice; therefore, pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy ended.   On this basis I will grant the landlord an Order of Possession that is effective November 30, 2011; the date requested by the landlord.

The landlord has claimed unpaid rent for October in the sum of $765.00; which differs from the evidence indicating a rent increase had been given. November rent claimed is based upon a Notice of Rent Increase given, following the increase given in 2010. As there is some conflicting information between the application and the Notices increasing rent, therefore; I find that the landlord is entitled to unpaid rent for October and November, 2011, in the sum of $765.00 each month.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of $1,530.00 for October and November, 2011, 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.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of $382.50, in partial satisfaction of the monetary claim.

Conclusion

The landlord has been granted an Order of Possession that is **effective at 1 p.m. on November 30, 2011**. This Order may be served on the tenants, 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 $1,580.00, which is comprised of unpaid October and November, 2011, 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 tenant's security deposit plus interest, in the amount of $382.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of $1,197.50**.** In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and 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: November 09, 2011.

Residential Tenancy Branch