



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR OPR OPC MND MNR MNSD FF

Introduction

This hearing dealt with applications by the tenant and the landlord. The tenant applied to cancel a notice to end tenancy for unpaid rent. The landlord applied for an order of possession pursuant to a notice to end tenancy for unpaid rent and an order of possession pursuant to a notice to end tenancy for cause, as well as for monetary compensation and an order to retain the security deposit in partial compensation of the monetary claim. Two agents for the landlord, counsel for the landlord and the tenant participated in the teleconference hearing.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began in March 2011, with monthly rent in the amount of \$900, including utilities. There is no written tenancy agreement. The current landlord purchased the property in May 2011.

Notice to End Tenancy for Cause

The landlord stated that on October 31, 2011 they personally served the tenant with a notice to end tenancy for cause. The landlord submitted a copy of the notice to end tenancy for cause in their evidence.

The tenant stated that she could not find a copy of the notice to end tenancy for cause in her documents, and she could not recall whether the landlord served her that notice or not, as it was a hectic time for her. The tenant thought the landlord may have just given her a handwritten letter.

Landlord's Monetary Claim

The landlord and the tenant confirmed that the tenant had failed to pay \$120 of her rent for December 2011.

The landlord applied for monetary compensation for unpaid utilities. After the landlord purchased the rental unit and took over as landlord, the tenant had further occupants move into the rental unit. The landlord wanted the tenant to start paying for utilities. The landlord and the tenant did not agree in writing that the tenant would start paying for utilities.

The landlord also sought compensation for damage to the property, but withdrew that portion of their claim as premature.

Security Deposit

The landlord stated that their paperwork showed that the tenant only paid a \$300 security deposit. The tenant stated that she has receipts showing that she paid a security deposit of \$450 and a pet deposit of \$100.

Analysis

I accept the landlord's testimony as credible that they personally served the tenant with the notice to end tenancy for cause on October 31, 2011. The effective date of that notice, December 1, 2011, has already passed. The tenant did not apply to cancel the notice to end tenancy for cause. The tenant is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. The landlord is entitled to an order of possession pursuant to the notice to end tenancy for cause.

As I am granting an order of possession pursuant to the notice to end tenancy for cause, it is not necessary for me to consider the notice to end tenancy for unpaid rent.

I find the landlord is entitled to the balance of December 2011 rent, in the amount of \$120.

The landlord did not have a written agreement with the tenant to alter the terms of the tenancy agreement and require the tenant to pay separately for utilities. I therefore dismiss that portion of the landlord's claim.

The portion of the landlord's claim regarding damages is premature, as the tenant has an opportunity to do repairs before moving out. I accordingly dismiss that portion of the landlord's claim with leave to reapply.

As the amount of the landlord's monetary award is less than \$300, I find it is not necessary for me to determine at this time the full amount of security or pet deposits paid. It is open to the tenant to present to the landlord her receipts for her deposits, and to, if necessary, make an application for dispute resolution to recover the balance of her deposits.

As the landlord's application was partially successful, I find they are entitled to partial recovery of their filing fee, in the amount of \$25.

Conclusion

The portions of both the tenant's and the landlord's applications regarding the notice to end for unpaid rent are dismissed.

The portion of the landlord's application regarding unpaid utilities is dismissed.

The portion of the landlord's application regarding compensation for damage is dismissed with leave to reapply.

The landlord is entitled to a monetary award of \$145. I order that the landlord retain \$145 of the security deposit in full compensation of this amount. The landlord continues to hold the remainder of the security deposit and any pet deposit in trust, and must deal with the deposits in accordance with the Act.

I grant the landlord an order of possession effective two days from service. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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: December 22, 2011.

Residential Tenancy Branch