



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for an order of possession based upon an alleged breach of an agreement by the tenant, an order for money owed or compensation for damage or loss and unpaid rent, to keep all or part of the tenant's security deposit, and to recover the filing fee for the Application.

The landlord's agent, the owner or the rental unit and tenant appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to respond each to the other party, and make submissions to me.

I have reviewed all oral and written 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.

At the outset of the hearing, the landlord's agent stated that the tenant had moved out of the rental unit and that an order of possession was no longer being sought. Additionally, landlord's agent stated that the parties had made arrangements for the portion of the application seeking payment for utilities. I therefore have amended the landlord's application, excluding those issues. The landlord's agent stated that the remaining issues were dealing with unpaid rent for November and recovery of the filing fee.

Issue(s) to be Decided

Has the tenant breached the Residential Tenancy Act (the "Act") or tenancy agreement, entitling the landlord to an order monetary relief?

Background and Evidence

This one year, fixed term tenancy began on December 1, 2006, and continued thereafter on a month to month basis, until it ended on or about December 1, 2011. Monthly rent was \$1,200.00. The tenant paid a security deposit of \$600.00 and a pet damage deposit of \$100.00 on November 30, 2006.

The landlord's monetary claim is in the amount of \$1,200.00 for unpaid rent for November 2011, and recovery of the filing fee of \$50.00.

The landlord's relevant evidence included a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), issued on November 18, 2011, listing unpaid rent in the amount of \$1,200.00, a copy of a notice from the tenant, dated September 1, 2011, informing the landlord she was vacating the rental unit as of September 30, 2011, and a copy of a notice from the tenant, dated September 24, 2011, asking the landlord if she could change her vacate date from September 30, to either October 15 or the last day of the month.

The landlord's agent submitted that they allowed the tenant to extend her tenancy to the end of October 2011, due to the request dated September 24, 2011; despite this, the tenant remained in the rental unit until on or about December 1, 2011. The landlord stated that the tenant did not pay rent for November and that the tenant owes unpaid rent for that month.

The owner of the rental unit stated that upon receiving the tenant's first notice to vacate at the end of September, she arranged with her agents to attempt to re-rent the home. The owner submitted that the agents were unable to re-rent, so she enlisted a real estate agent to sell her home, as she believed the tenant was vacating at the end of October due to her latest notice.

The home was sold, due to the tenant's notice, and therefore it became necessary for the tenant to vacate when she agreed to, in order to comply with the closing date on the home sale, according to the owner.

The tenant in response stated that she believed she was entitled to withhold rent due to her belief that she was entitled to receive compensation of one month's rent as the landlord's house was sold.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written 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.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations, the landlord in this case, has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. I find the tenant failed to vacate the rental unit on the date listed on her notice to vacate and that she stayed an additional month, without paying rent. I therefore find that the tenant was overholding in the rental unit for the entire month of November and that the landlord is entitled to a loss of revenue for that month equal to the monthly rent, or \$1,200.00

I do not accept the tenant's claim that she was entitled to a month's compensation in rent as the landlord did not take steps to sell her property until after receiving the tenant's notice that she was vacating.

As I find the tenant overheld in the rental unit for the entire month of November, I find the landlord has established a monetary claim of \$1,250.00, comprised of loss of revenue of \$1,200.00 and the filing fee of \$50.00.

At the landlord's request, I **order** that the landlord retain the security deposit and interest of \$618.41 and pet damage deposit and interest of \$103.06 in partial satisfaction of the claim and I **grant** the landlord a monetary order pursuant to section 67 for the balance due of **\$528.53**.

I am enclosing a Monetary Order for **\$528.53** with the landlord's Decision. This Order is a **legally binding, final Order**, and may be filed in the Provincial Court of British Columbia (Small Claims) should the tenant fail to comply with this Monetary Order.

Conclusion

The landlord is granted a monetary order in the amount of \$528.53.

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 08, 2011.

Residential Tenancy Branch