



Dispute Resolution Services

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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 requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and compensation for damage or loss, to retain 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; however, F. L. entered the hearing approximately 10 minutes after the hearing commenced. 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.

Preliminary Matter

There was no claim before me in relation to damage or loss under the Act.

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 August 13, 2006, a deposit in the sum of \$365.00 was paid. Rent is currently \$730.00 per month, due on the first day of each month. A copy of the tenancy agreement was supplied as evidence.

The tenant confirmed receipt of a ten (10) day Notice to End Tenancy for non-payment of rent, on January 1, 2012, which had an effective date of January 10, 2012. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,498.00 rent due on January 1, 2012, within five days after the tenant personally received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant 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 parties agreed that after January 1, 2012, the tenant paid \$100.00 cash, toward December and January rent owed.

The landlord testified that the tenant did provide a cheque for December 2011 rent; when he took the December rent cheque to the bank he was told it would not clear. In mid-January the landlord attempted to cash the January and December rent cheques and neither was negotiable.

The tenant stated that the landlord should have tried to cash the cheques earlier; she also stated that the cheques were good for a 6 month period.

The tenant called the Residential Tenancy Branch (RTB) to discuss the Notice ending tenancy and did not dispute the Notice, as it had been issued on the day in the month January rent was due. The tenant told RTB staff that she received a Notice ending tenancy for unpaid rent on the date rent was due.

The tenant acknowledged that December, 2011, rent still has not been paid; however, the tenant indicated that fault was with the landlord, as he did not immediately deposit the cheque.

The landlord obtained information on electrical bills, which the tenant must pay. If she does not pay the amounts currently owed, the cost will be applied to the landlord's property tax. The landlord claimed \$42.99 from September 28 to November 29, 2011; plus \$42.99 from December 29, 2011 to January 29, 2012.

Analysis

I explained to the tenant that as I was not present when she had discussions with RTB staff, I must make my decision based on the facts before me. I do not doubt that the tenant discussed the Notice with the RTB staff, however; I am unable to confirm what details she provided to the staff; that would have formed their response to her.

I find, based on the tenant's acknowledgement, that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on January 12, 2012, 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 tenant did not dispute the Notice as she believed it was invalid. The tenant did not pay her rent owed for December, 2011, and has now failed to pay January rent owed.

If the tenant believed that the Notice was invalid she was required to dispute the Notice; she failed to do so. The tenant has paid only \$100.00 of rent owed for December, 2011 and January 2012. If the tenant had disputed the Notice and come to a hearing showing she had paid December rent in full within 5 days of January 1, 2012, I would have found the Notice issued on January 1, 2012, premature and invalid. However, the Notice issued on January 1, 2012, included an amount for the unpaid rent for December 2011. The tenant did not pay that rent in full and failed to dispute the Notice issued January 1, 2012.

Therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$1,360.00 for December 2011, and January, 2012, 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 plus interest, in the amount of \$376.76, in partial satisfaction of the monetary claim.

The tenant is required to pay the electricity costs, as required by the tenancy agreement. The claim for electricity costs is premature, as the tenancy has not yet ended. The landlord is at liberty to submit an application claiming these costs, should they not be paid once the tenancy has ended. The tenant is aware of the costs and the need to pay this utility fee.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, 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 \$1,410.00, which is comprised of unpaid December, 2011, and January, 2012 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 \$376.76, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,786.76. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The claim for utility costs 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: January 27, 2012.

Residential Tenancy Branch