



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, OLC, ERP, PSF, FF

Introduction

This was a cross-application hearing.

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, 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.

The tenant has applied to cancel a Notice ending tenancy for unpaid rent, compensation for damage and loss under the Act; Orders that the landlord comply with the Act, make emergency repairs for health or safety reasons and provide services or facilities required by law.

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.

Preliminary Matters

The tenant confirmed that the main issue to deal with during this proceeding is the Notice to End Tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the tenant's request to cancel the Notice issued ending tenancy for unpaid rent and I dismissed the balance of the tenant's claim with liberty to re-apply.

The tenant's 30 page evidence submission given to the landlord and Residential Tenancy Branch on February 27, 2012, was set aside as it was not served at least 5 days prior to the hearing.

The tenant applied for more time in which to cancel a Notice; however, she did apply within the 5 day time-frame.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent or should the Notice be cancelled?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

Background and Evidence

The signed tenancy agreement supplied as evidence indicated that the tenancy commenced on June 1, 2008; rent is currently \$620.00 per month due on or before the first day of each month. A deposit in the sum of \$300.00 was paid on May 28, 2008.

The tenant confirmed that on February 3, 2012, she received a Ten (10) Day Notice to End Tenancy for non-payment of Rent, which had an effective date of February 13, 2012; she applied to dispute the Notice within 5 days.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$620.00 within five days after the tenant was assumed to have 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 tenant did pay \$50.00 of February rent owed and was issued a receipt for use and occupancy only.

The tenant stated she did not pay the rent owed as she believes she is entitled to compensation for damage or loss.

Analysis

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 February 3, 2012, I find that the earliest effective date of the Notice is February 13, 2012.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on February 13, 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. In the circumstances before me the tenant applied to cancel the Notice, but has not paid the rent that was due on February 1, 2012. The tenant currently owes the landlord \$570.00 and acknowledged she has not paid March rent owed.

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 \$570.00 for February, 2012, rent owed, 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 \$303.05, in partial satisfaction of the monetary claim.

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 \$620.00, which is comprised of unpaid February, 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 \$303.05, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$316.95. 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 tenant's application was severed and all matters outside of her request to cancel a Notice for unpaid rent are 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: March 05, 2012.

Residential Tenancy Branch