



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, MNDC, MNSD and FF
Tenant: CNR, MNDC, LAT, RR, FF and O

Introduction

This hearing was convened on applications by both the landlord and the tenant.

By application dated March 23, 2012, the landlord sought an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served in person on March 7, 2012. The landlord also sought a Monetary Order for the unpaid rent, loss of rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

By prior application of March 13, 2012, the tenant sought to have the Notice to End Tenancy set aside, a monetary award for loss or damage under the legislation or rental agreement, authorization to change locks, reduced rent and recovery of the filing fee for this proceeding.

Issue(s) to be Decided

The landlord's application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order for the unpaid rent and filing fee, and authorization to retain the security deposit in set off.

The tenants' application requires a decision on whether there are grounds to set the Notice to End Tenancy aside and whether the other orders sought are warranted.

Background and Evidence

This tenancy began on June 4, 2011 under a fixed term rental agreement set to end on May 31, 2011. Rent is \$1,800 per month and the landlord holds a security deposit of \$900 paid on June 3, 2011.

During the hearing, the landlord gave evidence that he had served the 10-day Notice to End Tenancy of March 7, 2012 when the tenant had a rent shortfall of \$1,391.25.

The parties concurred that, in the interim, the tenant had made a payment but that a shortfall of \$599 remains unpaid.

The tenant stated that she had been withholding \$400 from the rent since January 2012 because the dishwasher and stove were not working, and she had replaced the refrigerator herself in September of 2011 but had not be able to prepare a meal in the rental unit since then.

The landlord stated that he had not been advised of problems with the stove and dishwasher until after he had served the Notice to End Tenancy and submitted a copy of an email from the tenant dated January 5, 2012 which stating that, "We luv your home and do enjoy it very much."

The tenant provided a number of emails from March 2012 which discussed the non-working appliances, but none from earlier periods.

The tenant stated that the landlord had so frequently contacted her at work that she had been terminated from her employment. The claim was supported by written evidence from her employer but the tenant has submitted a Statement of Claim before the Provincial Court of British Columbia on that matter.

Analysis

Section 26 of the *Act* provides that:

"(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent."

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it as the tenant has done in this matter.

In this instance, while the tenant has made application, I find as fact that the tenant did not pay the rent within five days of receiving the notice and that she had no right under the *Act* to withhold rent. Therefore, the Notice to End Tenancy remains in effect. .

Accordingly, I find that the landlord is entitled to an Order of Possession effective two days from service of it on the tenant.

I further find that the landlord is entitled to a Monetary Order for the rent arrears as agreed by the tenant. As I cannot ascertain for certain if the landlord will be able to find a new tenant in April 2012, I cannot make an award for loss of rent.

I would further note that the landlord has claimed a late fee under an addendum to the rental agreement stating that late rent will be subject to a fee of \$25 per day for the first five days it is late. That provision contravenes Regulation 7(1)(d) which limits late fees to a maximum of \$25. Therefore, I find that the rental agreement is unenforceable on the question of late fees and decline to make an award.

Having found merit in the landlord's application, I find that he is entitled to recover the filing fee for this proceeding from the tenant.

I further find that the landlord is entitled to retain the amount owed to him by the tenant from the tenant's security deposit.

Thus, I find that the landlord is entitled to a Monetary Order calculated as follows:

Tenant's Credits		
Award to Landlord		
Rent arrears as agreed by parties	\$599.00	
Filing fee	<u>50.00</u>	
Sub total landlord may retain from security deposit	\$649.00	- 649.00
Balance of deposit remaining		\$251.00

Item 2.3 under the Rules of Procedure provides that :

"If, in the course of the dispute resolution proceeding, the Dispute Resolution

Officer determines that it is appropriate to do so, the Dispute Resolution Officer Residential Tenancy Branch Rules of Procedure may dismiss unrelated disputes contained in a single application with or without leave to reapply.”

In the present matter, I find that the issue of ending the tenancy for unpaid rent has taken precedence over other matters raised by the tenant, some of which are rendered moot by the imminent end of the tenancy and some of which are before the Provincial Court of British Columbia, and any such as may remain are better dealt with separately. Therefore, the balance of the tenant’s application is dismissed with leave to reapply.

Conclusion

The landlord’s copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenant.

In addition, the landlord is hereby authorized to retain \$649 from the tenant’s security deposit.

The landlord remains at liberty to make application for any further damage or losses as may be ascertained at the conclusion of the tenancy.

The tenant’s claims for damage or loss 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: April 02, 2012.

Residential Tenancy Branch