



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession for unpaid rent, a monetary order for unpaid rent and recovery of the filing fee

Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

This tenancy began August 1, 2011 with monthly rent of \$650.00 and the tenant paid a security deposit of \$325.00.

On March 31, 2012 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, the tenant has not filed to dispute this notice.

The landlord testified that the tenant did not pay all of the December 2011 rent and owes a balance of \$275.00. The landlord stated that the tenant has paid the April and May 2012 rent in full and that the tenant was not provided with a receipt stating '*for use and occupancy only, does not reinstate tenancy*'.

The tenant testified that in September 2011 the stove in the rental unit was disconnected by Work Safe BC due to illegal and unsafe electrical wiring. The tenant stated that it took 1 week for the landlord to get the wiring fixed and the stove working again however the landlord insisted it was only a few days. The tenant stated that during this time she made the decision to move but then she and the landlord had a conversation and the tenant decided to stay in the rental unit.

As the tenant was going to move she contacted the ministry and told them to stop sending the landlord rent payments. Then when the tenancy was reinstated the ministry sent the rent payment but the amount sent to the landlord was \$275.00 short. The

tenant stated that she went to the ministry and they advised her that they would not be sending more money and the tenant who is on disability, was to somehow cover the \$275.00 rent shortfall. The tenant stated that as her income is fixed she offered to make payments to the landlord however the landlord refused and demanded the full amount be paid at once.

The landlord was asked in this hearing if he would agree to the tenant making payments on the \$275.00 and the landlord flatly refused.

Analysis

Based on the documentary evidence and testimony I find that the tenant was properly served with a notice to end tenancy for non-payment of rent and did not pay the outstanding rent within 5 days of receiving the notice or apply for dispute resolution to dispute the notice.

However as the landlord took receipt of rent monies from the tenant after issuance of the notice and did not provide the tenants with a receipt stating *'for use and occupancy only, does not reinstate tenancy'*, (Residential Tenancy Fact Sheet RTB-124, Re-Instatement of Tenancies) the landlord has effectively re-instated the tenancy and must serve the tenant a new 10 day notice to end tenancy for non-payment of rent if the landlord wishes to seek an order of possession. Therefore the landlord is entitled to a monetary order for unpaid rent but is not entitled to an order of possession for unpaid rent.

Accordingly, the notice to end tenancy is hereby set aside and the tenancy continues in full force and effect.

I however find that the landlord is entitled to a monetary order for \$275.00 for unpaid rent. **However as the tenant is on a fixed income and will have to go to the ministry for help, the tenant will be allowed 30 days after receipt of this decision or until June 30, 2012, whichever comes first, to make arrangements to pay the \$275.00.** It should be stressed that if the tenant is not able to secure the required funds that the landlord may seek an order of possession and the tenant ultimately lose their housing.

It should be noted that the tenant was without a required service during this tenancy and the landlord should take that fact into consideration before simply dismissing an agreement for the tenant to make payments on the amount due if the ministry fails to assist the tenant and provide the full amount.

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the landlord has established a monetary claim for \$275.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I grant the landlord a monetary order under section 67 for the amount of **\$325.00**.

If the amount is not paid by the tenant(s), the Order may be filed in the Provincial (Small Claims) 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: May 2, 2012

Residential Tenancy Branch