



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

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

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

By application of April 30, 2012, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on April 22, 2012. The landlord also sought a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding and.....authorization to retain the security deposit in set off against any balance found to be owed.

By application of April 26, 2012, the tenant seeks to have the Notice to End Tenancy of April 16, 2012 set aside.

Issue(s) to be Decided

This matter requires a decision on whether the Notice to End Tenancy should be set aside or upheld with an Order of Possession, and whether and in what amount the landlord is entitled to an award for the monetary claims submitted.

Background and Evidence

This tenancy began on April 1, 2012. Under the one-year fixed term rental agreement rent is \$2,400 per month, due on the first and the tenant committed to pay a security deposit of \$1,200 on April 1, 2012.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of April 16, 2012 was served after the tenant had a rent shortfall of \$250 from March 2012, and had refused to pay the \$1,250 rent for April 2012, confirmed by sworn witness Affidavits.

In the interim, the landlord stated that the tenant remains in the rental unit and has not paid the rent for May 2012.

The tenant stated that she had paid the rent for April 2012 and for May 2012 in cash and that she had replaced the \$250 NSF cheque for March with cash. The tenant stated that the landlord had not given her receipts, and that she had never before seen the series of rent receipts from the beginning of the tenancy to March 2012 submitted into evidence by the landlord.

The tenant stated that she had a receipt for payment of rent for May 2012 - an assertion challenged by the landlord - but that she had not felt it necessary to submit it into evidence as she believed she had come to agreement with the landlord.

Analysis

I find the evidence of the landlord to be more credible than that given by the tenant. I accept the evidence of the landlord that it is her custom to issue receipts for rent paid in cash and I accept the copies submitted into evidence as authentic. I find the tenant's assertion that she regularly paid \$1,250 in cash without expecting a receipt beyond the realm of reason. With no documentary or corroborating evidence from the tenant, I find as fact that she has not paid rent as claimed by the landlord.

Section 26 of the *Act* provides that tenants must pay rent when it is due.

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.

In this instance, I find that the tenant has made application to contest the notice but that she did not pay the rent within five days of receiving it and she has not paid any rent in the interim.

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

I further find that the landlord is entitled to a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding, and authorization to retain the security deposit in set off as follows:

As the Notice to End Tenancy has been upheld on the landlord's application, the tenant's application is dismissed without leave to reapply.

Rent shortfall for March 2012	\$ 250.00
Rent/loss of rent for May 2012	1,250.00
Filing fee	<u>50.00</u>
Sub total	\$2,800.00
Less retained security deposit (No interest due)	- 625.00
TOTAL	\$2,175.00

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 to authorization to retain the security deposit in set off, the landlord's copy of this decision is also accompanied by a Monetary Order for \$2,175.00, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The tenant's application is dismissed without 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: May 11, 2012.

Residential Tenancy Branch