



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, MT, CNR, OLC, ERP, RP, PSF, LRE, RR, 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 applied to cancel a 10 Day Notice to end Tenancy for Unpaid Rent, a monetary order for compensation for damage or loss under the Act, an order the landlord comply with the Act, make emergency repairs, repairs, provide services or faculties required by law, return the tenant's personal property, suspend or set conditions on the landlord's right to enter the unit and to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

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, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

Initially the tenant stated she had increased her claim from \$1,800.00; however, an amended application was not submitted, or served to the landlord.

The tenant made 3 separate late evidence submissions; all of which were set aside and not considered. The tenant was at liberty to provide oral testimony in relation that those written submissions.

The tenant indicated multiple matters of dispute on her application and confirmed that the main issue to deal with during this proceeding was the Notice to End Tenancy

issued on May 7, 2012. 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 for more time to apply and to set aside or cancel the Notice to End Tenancy for Unpaid Rent and I dismissed the balance of the tenant's claim with liberty to re-apply.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent or should the 10 Day Notice to End Tenancy for Unpaid Rent issued on May 7, 2012, 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 tenancy commenced on March 15, 2012; rent is \$900.00 per month, due on the first day of each month. A partial deposit in the sum of \$320.00 was paid.

The landlord and tenant agreed that on May 7, 2012, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of May 17, 2012, was given to the tenant, at the rental unit, with an R.C.M.P. member present.

The tenant applied to cancel the Notice 7 days later, as the 5th day for application fell on a Saturday and the government office that accepts applications was closed.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,030.00 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 landlord stated the tenant had not paid May rent in the sum of \$900.00 and she had not paid the balance of the deposit owed; \$130.00. The tenant has not paid June, 2012, rent owed.

The tenant confirmed that she has not paid May or June, 2012, rent in the sum of \$1,800.00. The tenant stated that she did not pay rent as the landlord owes her money for deficiencies that have existed and that she had claimed compensation for that reason.

Analysis

I determined that the tenant applied to cancel the Notice within the required time-frame and the application to cancel the Notice proceeded.

I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on May 17, 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 did dispute the Notice, however; she did not pay May or June, 2012, rent owed.

The tenant has breached the Act by failing to pay rent, in the belief that she is entitled to compensation for deficiencies in the unit. There was no evidence before me that the tenant took any steps to obtain an Order providing the authority to make deductions from rent owed. The tenant confirmed that she has not made any emergency repairs.

Therefore, pursuant to section 46(5) of the Act, I find that the tenant has failed to pay rent owed and that the Notice issued on May 7, 2012, is of full force and effect. On this basis I will grant the landlord an Order of Possession that is effective 2 days after the Order is served.

Based on the tenant's acknowledgement that she did not pay rent owed, I find that the tenant has not paid rent in the amount of \$1,800.00 for May and June, 2012, and that the landlord is entitled to compensation in that amount.

Section 26 of the Act provides:

26 (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.

(Emphasis added)

During the hearing it was explained that a tenant does not have the right to make deductions from rent owed unless an Order allowing a deduction has been issued. The tenant made deductions from rent owed, in breach of section 26 of the Act

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 \$320.00, 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 \$1,850.00, which is comprised of unpaid May and June, 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 in the amount of \$320.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,610.00. 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 balance of the tenant's claim 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: June 07, 2012.

Residential Tenancy Branch