



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MT, CNC, CNR, SS, OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to joint applications filed by both the landlord and the tenant.

The landlord's application filed May 30, 2012 seeks:

1. A monetary order pursuant to Section 67;
2. An Order of Possession pursuant to Section 55;
3. An Order to retain the security and/or pet deposit pursuant to Section 38; and
4. An Order to recover the filing fee pursuant to Section 72.

The tenant's application filed May 31, 2012 seeks:

1. More time to make this application;
2. To cancel a Notice to End Tenancy given for Cause
3. To cancel a Notice to End Tenancy given for unpaid rent;
4. To serve documents and evidence in a different way than as required by the Act.

Both parties attending the hearing. At the hearing the tenant submitted that she did not intend to file an application seeking to cancel a Notice to End Tenancy given for cause, or for an Order allowing more time to make this application or for an Order to be allowed to serve documents by way of substituted service. These applications are therefore withdrawn.

Based on the evidence of the parties I find that the tenant was properly served with the 10 day Notice to End Tenancy by way of personal service on May 25, 2012.

Both parties were given a full opportunity to be heard, to present evidence and to make submissions. Neither party requested an adjournment or a Summons to Testify.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

Issue(s) to be Decided

Whether the landlord has cause to end this tenancy and receive an Order of Possession and whether the landlord is entitled to monetary order for unpaid rent, damages and for recovery of the filing fee.

Background and Findings

Order of Possession

The tenant's rent is \$650.00 per month payable on the first of each month. The undisputed evidence is that the tenant only paid only a portion of her May rent leaving a balance owing of \$200.00 plus two NSF fees for rent due for March and May each in the sum of \$25.00. The landlord therefore issued a 10 day Notice to End Tenancy on May 23, 2012 seeking the \$250.00 in rental arrears and NSF charges and served the tenant with this Notice on May 25, 2012 in person. On May 28, 2012 the landlord's agent attended the rental unit for the sole purpose of doing an inspection of the rental unit. The tenant testified that she offered the agent the rental arrears but the agent would not accept payment. The agent testified that her only role was to perform an inspection and she was not authorized to accept rental payments. Agent for the landlord testified that the landlord had written to all of her tenants to advise them that the rent was to be paid to the landlord directly. To date the rental arrears and NSF fees have not been paid and the landlord is seeking \$200.00 in rental arrears for May 2012.

A landlord may appoint an agent for certain tasks. For instance a landlord may appoint a plumber to attend the rental unit to repair plumbing, however just because he is the landlord's agent in this regard does not mean that the plumber should accept rental payments from the tenant. I find this to be a similar circumstance; the landlord's agent attended the rental unit for the sole purpose of performing an inspection, not to collect rents. Once the tenant was aware that the agent could not accept rents it was the tenant's duty to ensure that she attended at the landlord personally to ensure that her late rent payment would arrive in the landlord's hands within the 5 days allowed under the Act when service of a 10 day Notice to End Tenancy for unpaid rent has taken place. However, this tenant did not attend on the landlord personally to ensure her payment arrived in time. I therefore find that the landlord is entitled to an Order for Possession and the tenant's application seeking to cancel the Notice to End Tenancy for unpaid rent is therefore dismissed.

Monetary Order

I find that the landlord has met the burden of proving that there are rental arrears of \$200.00. I find the landlord is entitled to recovery of those arrears.

The parties agree that the tenants rent cheques for April and May were both returned due to NSF funds. The tenant maintains that these were as a result of bank errors. Whether that is the case or not, the evidence shows that the cheques were returned and the landlord is entitled to recover \$25.00 for each instance for a total of \$50.00.

The landlord has also made a claim for \$298.04 for a broken window. The tenant agrees that she caused this damage and I will therefore grant the landlord an award for this sum.

Security Deposit

I find further that the landlord is entitled to retain the security deposit and interest to the date of this decision in partial satisfaction of the rental arrears.

Filing Fees

I find that the landlord is entitled to recover the filing fees paid for this application.

Calculation of total Monetary Award

Rental Arrears	\$200.00
Broken Window	298.04
NSF fees 2 x \$25.00	50.00
Filing Fees for the cost of this application	50.00
Less Security Deposit (no interest accrued)	-325.00
Total Monetary Award	\$273.04

Conclusion

The landlord is provided with a formal copy of an order of possession. This is a final and binding Order enforceable as any Order of the Supreme Court of British Columbia.

The landlord is provided with a formal copy of an order for the total monetary award as set out above. This is a final and binding Order enforceable as any Order of the Provincial Court of British Columbia.

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 19, 2012.

Residential Tenancy Branch