



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, OPC, OPB, MND, MNR, MND, MNSD, MNDC and FF
Tenant: CNR, CNC and OLC

Introduction

This hearing was convened on applications by both the landlords and the tenants.

By application of July 11, 2012, the landlords sought an Order of Possession pursuant to a one-month Notice to End Tenancy for cause served on June 28, 2012 and a 10-day Notice to End Tenancy for unpaid rent served on July 4, 2012. The landlords also sought a monetary award for unpaid rent, damage to the rental unit, damage or loss (future loss of rent), recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance.

By application of July 10, 2012, the tenant sought to have both notices set aside and an Order for landlord compliance with the legislation and rental agreement.

As the tenancy has not yet ended, the parties were advised that the claims for damage to the rental unit and future loss of rent are premature and could not be dealt with in the present hearing and are dismissed with leave to reapply if and when it is appropriate to do so.

Issue(s) to be Decided

The landlords' application now requires a decision on whether they are entitled to an Order of Possession under either notice and Monetary Order for the unpaid rent and filing fee, and whether they may retain the security deposit in set off.

The tenant's application requires a decision on whether either or both notices should be set aside and whether circumstances warrant an Order for landlord compliance with the legislation and/or rental agreement.

Background, Evidence and Analysis

This tenancy began on June 15, 2012 under a fixed term rental agreement set to end on July 1, 2013. Rent is \$1,125 per month and the landlords hold a security deposit of \$562.50 paid at or shortly before the beginning of the tenancy.

Landlords' Claims

On the matter of the Notice to End Tenancy of July 4, 2012, the tenant concurred that she had received the notice on that date.

The parties agreed that there had been some confusion over the rent for the second half of June 2012 as the landlord had, in error, deposited a post dated cheque which the tenant's credit union had processed in error as NSF. That matter was resolved between the parties, the credit union issued an apology to the tenant and there is no dispute over the June 2012 rent.

However, the parties concur that at the time of the hearing on July 30, 2012, the tenant had not yet paid the rent due on July 1, 2012.

The tenant made explanation that after the difficulty with the June cheque, the credit union had advised her not to pay by cheque and her efforts to arrange a direct deposit system had failed.

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 tenants may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In the present matter, I find that the tenant did not pay the rent within five days of receiving the Notice to End Tenancy for unpaid rent.

Therefore, I find that the Notice to End Tenancy was lawful and valid and that the landlords are 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 rent for July 2012 and recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

The monetary award is calculated as follows:

Rent July 2012	\$1,125.00
Sub total	\$1,175.00
Less retained deposit	<u>- 562.50</u>
TOTAL	\$ 612.50

As the tenancy is ending on the Notice to End Tenancy for unpaid rent, I find it is not necessary to canvass evidence on the Notice to End Tenancy for cause.

Tenants Claims

Having upheld the Notice to End Tenancy for unpaid rent, the tenant's request to have that Notice aside is dismissed without leave on its merits. The request to have the Notice to End Tenancy for cause set aside is moot.

As the end of the tenancy is imminent, the tenant's request for an Order for Landlord Compliance is also dismissed as moot.

Therefore, the tenant's application is dismissed without leave in its entirety.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlords' claims for damage to the rental unit and for loss of future rent are dismissed as premature with leave to reapply.

The landlords' 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, the landlords' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$612.50** for service on the tenant.

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: July 30, 2012.

Residential Tenancy Branch