



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, FF / CNR

Introduction

This matter was originally scheduled for hearing on July 26, 2012, in response to 2 applications: i) by the landlord for an order of possession for unpaid rent / and recovery of the filing fee; ii) by the tenant for cancellation of a notice to end tenancy for unpaid rent. While agents representing the landlord participated in the hearing and gave affirmed testimony, the tenant did not appear. By decision dated July 26, 2012, an order of possession and a monetary order were issued in favour of the landlord, and the tenant's application was dismissed.

Subsequently, on July 27, 2012 the tenant filed an application for review consideration. By decision dated August 8, 2012, the tenant's application was granted, and this present hearing was scheduled. In the meantime, the decision and orders dated July 26, 2012 were suspended pending the completion of this present hearing.

Both parties attended and / or were represented and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on August 1, 2005. Presently, monthly rent is \$1,183.00, and it is due and payable in advance on the first day of each month. As a result of an agreement reached between the parties, in recent months the monthly rent was temporarily reduced. However, this temporary reduction in rent did not apply to July 2012. As the tenant's payment towards July's full rent of \$1,183.00 was limited to \$600.00, the landlord issued a 10 day notice to end tenancy for unpaid rent (\$583.00) dated July 3, 2012. The notice was served on that same day by way of posting on the tenant's door. Subsequently, the tenant made no

further payment toward rent for July, however, she had already filed an application to dispute the notice on June 29, 2012.

The tenant's payment of rent for August 2012 was also limited to \$600.00, leaving a balance of rent owing for August 2012 in the amount of \$583.00 (\$1,183.00 - \$600.00). The landlord issued a receipt in exchange for this limited payment marked "for use and occupancy only." Presently, the amount of overdue rent combined for July and August totals \$1,166.00 (2 x \$583.00) and the tenant continues to reside in the unit.

As for the monetary order, the landlord seeks compensation for rent that currently remains overdue in the amount of \$1,166.00, as above, in addition to recovery of the \$50.00 filing fee.

The landlord also seeks an order of possession to be effective October 31, 2012. The landlord has proposed a time limited delay in the effective date of the order of possession in order to permit "negotiations with [the tenant] via a third party legal advocate to reach a consensual resolution to this dispute." In the meantime, however, the landlord has determined that rent will remain unchanged from \$1,183.00 for each of September and October 2012.

During the hearing the parties exchanged views around some of the circumstances surrounding the dispute and undertook to achieve a resolution.

Analysis

Based on the documentary evidence and testimony, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent (\$583.00) dated July 3, 2012. The tenant did not pay the outstanding rent within 5 days of receiving the notice. The tenant's application to dispute the notice was filed on June 29, 2012, before service of the notice but in anticipation of its service. Subsequently, the tenant made no further payment toward rent for July, and rent paid for August was limited to \$600.00, or also \$583.00 short of the \$1,183.00 due.

Section 26 of the Act speaks to **Rules about payment and non-payment of rent**, and provides in part as follows:

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.

I find that the tenant has established no basis upon which to withhold or deduct any portion of the rent due for July or August 2012. In the result, I find that the landlord has established entitlement to an order of possession.

As for the monetary order, I find that the landlord has established entitlement to a claim of \$1,216.00, which is comprised of unpaid rent for July and August 2012 in the total amount of \$1,166.00 (2 x \$583.00), in addition to the \$50.00 filing fee.

Section 63 of the Act speaks to the **Opportunity to settle dispute**. Pursuant to this provision, discussion between the parties during the hearing led to a resolution. Specifically, it was agreed as follows:

RECORD OF SETTLEMENT

- that the landlord withdraws the application to recover the \$50.00 filing fee;
- that the tenant will pay the landlord all rent currently overdue in the full amount of \$1,166.00 (2 x \$583.00);
- that the above payment will be made by way of either a Money Order issued either by a Bank or the Post Office;
- that the above payment will be made in person by the tenant to the landlord's office by no later than 4:00 p.m., Friday, August 31, 2012;
- that, going forward, the tenant will make payment of rent in the full amount due of \$1,183.00 on the first day of each month beginning September 1, 2012;
- that no further rent subsidies will be made available to the tenant by the landlord;
- that the landlord undertakes not to serve the tenant with the order of possession in the event that payment of rent is made, as detailed above;
- that future communications between the parties will take place via written correspondence sent by way of Canada Post regular mail or registered mail;
- that the parties will refrain from communicating with each other by way of e-mail or text messages;

- that the tenant will correspond with the landlord in writing, setting out all relevant particulars, in the event that she wishes to obtain the landlord's consent to sub-let or have a roommate, and
- that the tenant will refrain from and / or remove herself from participating in a tenant group known to both parties.

Section 82 of the Act speaks to **Review of director's decision or order**, and provides in part as follows:

82(3) Following the review, the director may confirm, vary or set aside the original decision or order.

Pursuant to the reasons provided in this decision, the decision and orders dated July 26, 2012 are hereby set aside.

Conclusion

The tenant's application is hereby dismissed.

I hereby issue an **order of possession** in favour of the landlord effective not later than **1:00 p.m., Wednesday, October 31, 2012**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,166.00**. Should it be necessary, the order may be served on the tenant, filed in the Small Claims Court 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: August 30, 2012.

Residential Tenancy Branch