



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for Strata fines or fees, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

At the beginning of the hearing, the Tenant admitted that she did not serve the Landlord with a copy of her documentary evidence and accordingly it is excluded pursuant to RTB Rule of Procedure 11.5(b).

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for Strata fines?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This fixed term tenancy started on April 22, 2012 and expires on May 21, 2013. Rent is \$1,175.00 per month payable in advance on the 1st day of each month plus utilities. The Tenant paid a security deposit of \$600.00 at the beginning of the tenancy.

The Parties agree that on June 3, 2012, the Landlord served the Tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it on the rental unit door. The Parties also agree that as of that date, the Tenant had rent arrears of \$375.00 for May 2012 and of \$1,175.00 for June 2012. The Parties further agree that on or about June 27, 2012, the Tenant made a payment in cash of \$2,350.00 and that the Tenant gave the Landlord a copy of a receipt for this payment. The Tenant said the receipt showed that the payment was applied to June and July 2012 rent and that there was a balance remaining of \$375.00 for May 2012 rent.

The Tenant said that in return for this payment, the Landlord cancelled a hearing scheduled for July 11, 2012 to enforce the 10 Day Notice dated June 3, 2012. The

Tenant also claimed that on or about July 15, 2012, the Landlord's agent asked her to pre-pay rent for August 2012 and it was only after she advised the Landlord's agent that she had no further funds at that time that the Landlord re-applied to enforce the 10 Day Notice. The Landlord's agent said the Landlord cancelled the previous hearing because the Tenant promised to pay her rent in full when it was due in the future but failed to do so and rent for August 2012 is unpaid. The Tenant admitted that she had not yet paid rent for August 2012 but denied that the Landlord or his agent said they would cancel the previous hearing if she paid her future rent on time.

The Parties agree that the Strata manager for the rental property sent a Notice to the rental unit to the Landlord's attention on or about May 3, 2012. The Tenant said the Notice included a fine of \$100.00 for taking longer than 3 hours to move in. The Landlord's agent said she received a letter from the Strata stating that the Landlord was being fined \$200.00 both for a move in fee and for the extra time it took the Tenant to move in.

Analysis

Section 46(4) of the Act states that within 5 days of receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or (if they believe the amount is not owed) apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit at that time.

I find that on June 3, 2012 the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities when it was posted to the rental unit door. Pursuant to s. 90(a) of the Act, the Tenant was deemed to receive this Notice three days later or on June 6, 2012. I find that the Tenant did not pay the overdue rent and did not apply for dispute resolution to cancel the Notice within the 5 days granted under s. 46(4).

However, I find that following the Tenant's payment on June 27, 2012, the Landlord agreed to reinstate the tenancy. I make this finding based on the fact that the Landlord had a hearing scheduled on July 11, 2012 to enforce the 10 Day Notice but chose not to proceed with that hearing. Furthermore, given the conflicting evidence of the Parties, I find that there is insufficient evidence that the Landlord agreed only to suspend the enforcement of that Notice if the Tenant made future rent payments on time. Consequently, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 3, 2012 is cancelled and the Landlord's application for an Order of Possession is dismissed without leave to reapply.

I find that the Landlord is entitled to recover rent arrears of \$375.00 for May 2012 and of \$1,175.00 for August, 2012. The Landlord may re-serve the Tenant with a new 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for this amount if it remains unpaid. I

also find that the Landlord is entitled pursuant to s. 7(1)(f) of the Regulations to the Act to recover a Strata move-in fee of \$100.00. The Landlord may re-apply to recover any further fees incurred during the Tenant's move in. As the Landlord has been successful on only part of his claim, I find that he is entitled to recover only one-half of the filing fee for this proceeding or \$25.00.

The Landlord also applied for an Order requiring the Tenant to pay a pet deposit, however I find that there is no authority under the Act to do so. The Landlord must first make a demand for the pet deposit within the time limits set out under s. 20 to the Act, failing which the Landlord may serve the Tenant with a One Month Notice to End Tenancy for Cause.

Conclusion

The Landlord's applications for an Order of Possession and for a pet deposit are dismissed without leave to reapply. As the tenancy has not ended, the Landlord's application to keep the Tenant's security deposit is dismissed with leave to reapply. A Monetary Order in the amount of **\$1,675.00** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 21, 2012.

Residential Tenancy Branch