



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, MNR, FF
 Tenant: DRI, CNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to dispute a rent increase and to cancel a notice to end tenancy

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to disregard a rent increase, pursuant to Sections 41 and 46 of the *Residential Tenancy Act* (Act).

It must also be decided if the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the Act.

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on July 4, 2012 for a month to month tenancy beginning on July 1, 2012 with a monthly rent of \$1,400.00 due on the 1st of each month. The agreement stipulates that the landlord requires a security deposit of \$700.00 and a pet damage deposit of \$700.00.

The landlord submits that since the beginning of July 2012 the tenant has provided the following payments \$550.00; \$78.92; \$120.00; and \$1,442.00 totalling \$2,190.92 for rent and deposits. The landlord asserts that he has not received rent for the months of August or September 2012 and the tenant has not paid the balance of the pet damage deposit.

In total the landlord submits that he should by August 5, 2012 he should have received from the tenant \$4,200.00 for two months rent and both deposits. As the landlord had only received \$2,190.92 he issued a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities for the difference in the amount of \$2,009.08.

The tenant submits that she and the landlord had a verbal agreement that she could take a couple of months to spread the payments over but that she arranged to have the money and the money remains in her bank account since the day she received the 10 Day Notice.

The tenant testified that she attempted to advise the landlord that she had the money in the bank but that he walked away and she made no other attempts to provide the money to the landlord. The tenant provided no testimony or evidence in regard to a rent increase.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

I accept the tenant has filed her Application to dispute the 10 Day Notice within the 5 day requirement under Section 46(4). However, the tenant has provided no evidence or testimony as under what authority she did not pay rent for August or September 2012 when it was due. As such, I dismiss the tenant's Application in its entirety.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$3,459.08** comprised of \$3,409.08 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: September 11, 2012.

Residential Tenancy Branch