



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent, damage to the rental unit and money owed or compensation for damage or loss, for authority to retain the tenant's security deposit and to recover the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, a monetary order and to recover the filing fee?

Background and Evidence

This month to month tenancy began on February 1, 2012, monthly rent is \$880.00, and no security deposit was paid by the tenant.

The landlord gave evidence that on June 20, 2012, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by posting on the door, listing unpaid rent of \$1260.00 owed as of June 1, 2012. The effective vacancy date listed on the Notice was June 30, 2012.

The tenant said she received the Notice via personal delivery on June 20, 2012.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenant had five days to dispute the Notice.

The landlord's monetary claim is in the amount of \$3070.00 for unpaid rent of \$380.00 for May, \$880.00 for unpaid rent for each June, July and August 2012, and the filing fee of \$50.00.

When questioned, the landlord said that the tenant has not made any payments of rent since issuance of the Notice.

The landlord submitted evidence of 4 receipts for rent payments, three from May 2012 and one from June 2012.

The receipts show payments of \$200.00 on May 2012, a payment of \$300.00 on May 25, 2012 and a payment of \$580.00, also on May 25, 2012.

I note that the receipts for May contained the landlord's agent's handwritten notations, some of which were illegible and were not consistent with the previous receipts.

Noteworthy is the receipt for June 2, 2012, which showed a payment of \$880.00, with a notation from the landlord's agent that saying April's rent was paid in full.

This receipt contradicts the landlord's testimony that the tenant owed a rent deficiency for April. In addition, I questioned the landlord as to whether all rent owed was paid by the end of April and she said yes. Therefore, according to the landlord, she did not submit evidence of receipts from previous months.

I must further note that the landlord said that the June 2, 2012, receipt was a duplicate receipt provided to the tenant at the tenant's request from an April payment, even though the "duplicate" copy showed the date of June 2, 2012. When questioned, the landlord did not provide a clear answer as to why they did not simply make a copy of their copy of the receipt and give that to the tenant instead of creating a new receipt.

I must also note that three of the receipts showed just the first name of the tenant, with two of those names being misspelled.

Tenant's response-

The tenant admitted that she owed a rent deficiency of \$380.00 for April and May due to a co-tenant issue, but contended that the June rent was paid in full. As a way of explanation, the tenant said she receives social assistance and that her rent from the Ministry providing the assistance is received a few days prior to the beginning of the next month the rent is due. All the funds received were given to the landlord at the end of May for the following month, June.

The tenant also said that the Ministry offered to pay the full rent for July, but that the landlord refused the payment.

The landlord confirmed this statement, saying they did not want to continue the tenancy.

The tenant admitted not paying rent for August and that she has packed her personal property and will be moving.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

The Act allows a landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent upon a tenant who has not paid the rent in full on the day it is due.

To be effective, however, the landlord has to prove the Notice was valid.

In the circumstances before me, I find the landlord supplied deficient and inconclusive documentary evidence which did not establish the amount of rent owed. The landlord's evidence failed to convince me that on the day the Notice was issued on June 20, 2012, the tenant owed the amount listed on the Notice.

For instance, the landlord submitted a receipt showing a payment of \$880.00 on June 2, 2012, with conflicting handwritten notations by the landlord's agent as to which month the rent was to be applied. There was no convincing explanation from the landlord why the alleged "duplicate" rent receipt from April was dated June 2, 2012. I therefore found I could not rely on the landlord's evidence to establish that the Notice was valid.

Although I mentioned in the hearing that the landlord appeared to be entitled to an order of possession, due to the above and after further review of the evidence after the hearing, I find that I cannot grant the landlord an order of possession due to the conflicting and contradictory oral and written evidence provided by the landlord.

I therefore dismiss the landlord's request for an order of possession. The tenant stated that she had her personal property packed and was vacating the rental unit in 2 days. However, if the tenant fails to vacate, the landlord is at liberty to issue another 10 Day Notice to End Tenancy for Unpaid Rent.

As to the landlord's request for a monetary order, I find the landlord submitted insufficient evidence to prove that the tenant owed rent for June, due to the receipts issued showing a full payment for that month and contradictory testimony provided by the landlord. I therefore dismiss their request for a monetary order of \$880.00 for June 2012.

I find the landlord has established a monetary claim for unpaid rent for July and August of \$880.00 each month.

I also find that the landlord has established that the tenant owed rent of \$380.00 for a rent deficiency for April and May 2012, as agreed to by the tenant.

I allow the landlord recovery of the filing fee of \$50.00.

Conclusion

The landlord's request for an order of possession is dismissed, with liberty to issue another 10 Day Notice to the tenant should she fail to vacate the rental unit as stated in the hearing.

I find that the landlord has established a total monetary claim of \$2190.00 comprised of outstanding rent of \$380.00 for April and May 2012, unpaid rent of \$880.00 for July, unpaid rent of \$880.00 for August 2012, and the \$50.00 filing fee paid by the landlord for this application.

I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$2190.00, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

I note that the landlord made no request either at the hearing or on their application for compensation for unpaid rent for September 2012 and it was therefore not considered.

Both parties were informed that should there be any remaining questions about their rights and obligations under the Residential Tenancy Act, they should contact the Residential Tenancy Branch seeking information.

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 12, 2012.

Residential Tenancy Branch