



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, OLC, RP, PSF, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession, compensation for unpaid rent, damage or loss under the Act, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied requesting the landlord complete repairs to the unit, comply with the Act, and provide services or facilities required by law.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

At the start of the hearing the tenant indicated that the landlord has completed the repairs that were set out in her application. Therefore, the tenant's application was withdrawn.

The landlord claimed compensation for damage and loss, however; there was no evidence before me in support of a claim for damage or loss under the Act.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the deposit paid by the tenant?

Background and Evidence

The tenancy commenced on February 1 2010, rent was \$600.00 per month, due on the first day of each month. A deposit in the sum of \$300.00 was paid. A copy of the tenancy agreement was supplied as evidence.

Currently the rent is \$625.30 as the result of a Notice of increase given, effective September 1, 2012.

The tenant confirmed receipt of a 10 Day Notice to End Tenancy for Unpaid Rent issued and given to her on October 8, 2012; effective October 18, 2012.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$69.60 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy is ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant confirmed that she did not pay the outstanding rent and that she did not dispute the Notice.

The landlord claimed compensation in the sum of \$669.60. During the hearing the landlord indicated the tenant had current rent arrears is \$69.20. A copy of a letter given to the tenant dated October 3, 2012, indicated the rent owed at that point was \$44.30. Calculation of the amounts paid and owed contained in the letter show that the outstanding arrears is \$69.60.

Analysis

Based on the acknowledgement of the tenant, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on October 18, 2012, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenant has confirmed that she did not pay the balance that was agreed is owed; \$69.20. Therefore, in the circumstances before me, as the tenant did not pay the rent or dispute the Notice to show she had paid the rent, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served to the tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$69.20 for October 2012 and that the landlord is entitled to compensation in that amount.

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit plus interest, in the amount of \$119.20 in satisfaction of the monetary claim.

The landlord is holding a balance of deposit in the sum of \$180.80 which must be disbursed in accordance with the Act.

Conclusion

The tenant withdrew her application.

An Order of possession has been issued to the landlord.

The landlord is entitled to compensation in the sum of \$119.20 which consists of \$69.20 in unpaid October 2012 rent and the \$50.00 filing fee.

The landlord will retain the amount owed by the tenant, from the deposit. The balance of the deposit in the sum of \$180.80 will be disbursed in accordance with the Act.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 31, 2012.
