



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNC, CNR

For the landlord: OPR, OPC, MNR, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The tenant applied for an order seeking cancellation of a 1 Month Notice to End Tenancy for Cause and 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”).

The landlord applied for an order of possession due to unpaid rent and for alleged cause, a monetary order for unpaid rent, and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally, refer to documentary evidence timely submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, the tenant confirmed that she had vacated the rental unit as of the day before the hearing and agreed that she no longer requested her application seeking cancellation of the landlords’ Notices be heard. As the landlords live in another location apart from the rental unit, the landlords said they had not confirmed for themselves that the tenant vacated the rental unit.

Only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

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

Background and Evidence

This fixed term began on February 1, 2012, ended on October 31, 2012, according to the tenant, monthly rent was \$1500.00 and the tenant paid a security deposit of \$750.00 and a pet damage deposit of \$250.00 on January 15, 2012.

The landlords' evidence shows that on October 2, 2012, the landlord delivered a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") to the tenant's son, who, according to the tenant was not an adult, listing an amount of \$2500.00 as unpaid rent as of October 1, 2012. The effective move out date listed on the Notice was October 15, 2012.

The landlord submitted that the tenant has not made a rent payment since issuance of the Notice.

The tenant agreed that rent in the amount of \$2500.00 for September and October rent was not paid. The tenant reaffirmed her written evidence, showing that an unforeseen financial hardship had caused the non-payment of rent.

Analysis

Upon hearing from the parties and considering the landlords' evidence, I do not find that the tenant was served with the Notice in a manner required under section 88 of the Act; nonetheless the tenant received the Notice and acted upon it by amending her application seeking cancellation of the Notice and by apparently vacating the rental unit.

I am satisfied that the tenant owed the landlord rent in the amount listed when the Notice was issued, that she did not pay the outstanding rent to the landlords within five days of receiving the Notice and the tenant did not establish that she had the legal right to withhold the rent owed.

I therefore find that the landlords have proven their monetary claim for \$2550.00 for unpaid rent of \$2500.00 for September and October 2012 and recovery of the filing fee of \$50.00, which I have granted due to the landlord's successful application.

As I informed the parties at the hearing, out of an abundance of caution, I also find that the landlords are entitled to an order of possession for the rental unit in the unlikely event the tenant had not vacated the rental unit. I note that the parties discussed the manner of returning the keys to the rental unit.

Conclusion

I grant the landlords an order of possession for the rental unit effective 2 days after service upon the tenant, enforceable in the Supreme Court of British Columbia for enforcement as an order of that Court, should it be required. I enclose that monetary order with the landlords' Decision.

I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$2550.00, which I have enclosed with the landlords' Decision.

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

I dismiss the tenant's application, without leave to reapply.

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* and is being mailed to both the applicant and the respondent.

Dated: November 01, 2012.

Residential Tenancy Branch