



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNR, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has applied for a monetary Order for unpaid rent and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted no evidence in regards to the matter.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent; should the Notice to End Tenancy be set aside; and is either party entitled to recover the fee for filing their Application for Dispute Resolution, pursuant to sections 46(4), 67, and 72 of the *Residential Tenancy Act (Act)*?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on October 01, 2003; that the current monthly rent is \$1,023.00; and that rent is due by the first day of each month.

The Agent for the Landlord stated that the Tenant paid no rent in July of 2012; that she paid \$500.00 rent on August 20, 2012, in cash; that she paid \$500.00 rent on September 23, 2012, in cash; that she offered rent of \$500.00 on October 04, 2012, but the offer was declined; and that no rent has been offered since that date. The Agent for the Landlord stated that receipts were provided for the two cash payments, although they were not submitted in evidence.

The Tenant stated that she paid no rent in July of 2012; that she paid \$500.00 rent on August 20, 2012, in cash; that she paid \$500.00 rent on August 30, 2012, in cash; that she paid \$500.00 rent on September 23, 2012, in cash; that she offered rent of \$500.00 on October 03, 2012, but the offer was declined; and that no rent has been offered since that date. She stated that she has one signed receipt for the payment made on August 30, 2012, although it was not submitted in evidence.

The Landlord and the Tenant agree that at various times during the tenancy the Landlord has permitted the Tenant to pay rent late, but that all the rent had been paid by June 30, 2012. The Tenant stated that she has explained her personal circumstances to the Landlord and he had agreed that she could pay as much as she could at this time and that she could pay all the outstanding rent when she received an anticipated inheritance. The Agent for the Landlord stated that the current arrears are greater than at previous times; that the Landlord cannot afford to allow the debt to continue to accrue; and that the Landlord did not agree that the Tenant could withhold all or part of her rent until she received an inheritance, as the Landlord is not certain the inheritance is forthcoming.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of October 19, 2012, was posted on the door of the rental unit on October 11, 2012. The Tenant stated that she located the Notice on October 13, 2012.

Analysis

On the basis of the undisputed evidence, I find that the Tenant was obligated to pay rent of \$4,092.00 for the period between July 01, 2012 and October 31, 2012.

On the basis of the testimony of the Tenant, I find that only \$1,500.00 in rent was paid for this period. As section 26(1) requires tenants to pay all rent when it is due, I find that the Tenant still owes \$2,592.00 in rent for this period.

I find that the Landlord has submitted insufficient evidence to show that the Tenant did not pay \$500.00 in rent on August 30, 2012. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Agent for the Landlord's testimony it was not paid or that refutes the Tenant's testimony that it was paid. Had the Landlord submitted copies of the receipts that were allegedly provided to the Tenant for the payments made on August 20, 2012 and September 23, 2012, I would have found that the absence of a receipt for the August 30, 2012 payment would have

corroborated the Landlord's version of events. Without receipts of any kind, I simply have insufficient evidence to conclude that the August 30, 2012 payment was not made. I therefore cannot conclude that the Tenant owes more than \$2,592.00 in rent for the period between July 01, 2012 and October 31, 2012.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. On the basis of the undisputed evidence, I find that the Tenant received the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, on October 13, 2012.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant received this Notice on October 13, 2012, I find that the earliest effective date of the Notice was October 23, 2012.

Section 53 of the *Act* stipulates that if the effective date stated on a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was October 23, 2012.

As the Tenant did not pay all the rent that was due within five days of receiving the Notice to End Tenancy, I dismiss the Tenant's application to set aside the Notice to End Tenancy and I grant the Landlord an Order of Possession, as requested at the hearing.

In determining this matter I have placed little weight on the fact that the Landlord has permitted the Tenant to fall behind with her rent in the past. I find that the Landlord's decision to be lenient when rent is not always paid in full does not negate the Tenant's obligation to pay the rent when it is due nor does it require the Landlord to allow the debt to exceed the Landlord's comfort level.

In determining this matter I have also placed little weight on the Tenant's testimony that the Landlord agreed that she did not have to pay all the rent that was due until she received her inheritance. This finding was heavily influenced by the absence of evidence that corroborates this testimony or that refutes the Landlord's testimony that he did not agree that the Tenant's rent could be outstanding indefinitely.

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 the Landlord's Application for Dispute Resolution. I find that the Tenant's application is without merit and I dismiss her application to recover the fee for filing the Tenant's Application for Dispute Resolution.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective at 1:00 p.m. on November 30, 2012, which is the date requested by the Landlord. 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 has established a monetary claim, in the amount of \$2,642.00, which is comprised of \$2,592.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I grant the Landlord a monetary Order for this amount. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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: November 21, 2012.

Residential Tenancy Branch