



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords: OPR, MNR, MNSD and FF
Tenant: DRI, MNDC and RR

Introduction

This hearing was convened on applications by both the landlords and the tenants.

By application of October 22, 2012, the landlord seeks an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served by posting on the tenant's door on October 8, 2012. The landlord also seeks a monetary award for unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

By application of October 15, 2012, the tenant seeks to have the Notice to End Tenancy set aside, to dispute a rent increase and an order for rent abatement for loss of use of facilities.

Rule 2.3 under the rules of procedure provides that, if it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.

In the event it might become necessary to do so, the hearing first dealt with the landlord's application for an Order of Possession and the unpaid rent as the primary issues in the dispute.

The tenant's application for other matters was to be dealt with as time permitted. As the allotted hour had elapsed before the tenant's application could be fully heard, the tenant's application was dismissed with leave to reapply on all matters except the request to set aside the Notice to End Tenancy.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and a Monetary Order for unpaid rent, filing fee and authorization to retain the security deposit in set off?

Is the tenant entitled to a credit for an improper rent increase, loss of facilities and loss of use of facilities?

Background and Evidence

This month to month tenancy began on September 15, 2011. Rent is \$800 per month and the landlord holds a security deposit of \$400. A requested pet damage deposit was never paid.

This matter was complicated by the fact that there are two rental agreements, the latter of which included the tenant's agent as a tenant, dated October 21, 2012 but signed only by the applicant tenant. The agent stated he had never been a tenant in the rental unit and the landlord gave contested evidence that the tenant had never paid the additional \$100 per month sought in the new agreement to compensate for the additional tenant.

This matter was further complicated by the fact that there had been a number of notices to end the tenancy, including a notice for landlord use in which the landlord had offered to waive the rent for July 2012. In addition, the tenant had signed a Mutual Agreement to End the Tenancy on August 3, 2012 to take effect on September 1, 2012, but she did not vacate as agreed.

The tenant challenged the landlord's claim for July 2012 on the grounds it had been waived, but the landlord noted the free rent had been contingent on the tenant honoring the notice for landlord use. She stated that she had agreed to the tenant's pleadings to remain and continued the tenancy on the expectation that the July rent would be paid. The tenant has paid \$100 toward the July rent and submitted a receipt issued for that payment which states that \$700 remained owing.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of October 8, 2012 had been served when, in addition to July 2012 rent shortfall, the tenant had not paid the rent due on October 1, 2012.

In the interim, those amounts remain unpaid, and the tenant has paid no rent for November 2012. Therefore, the landlord requests a monetary award for the unpaid rent and loss of rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off.

As to the tenant's application on matters other than the Notice to End Tenancy, I found that I was unable to fully assess her claims in allotted hour, due in part to frequent interruptions and a disorganized presentation by the tenant's agent.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, while I find that the tenant did make application within the five days of receipt of the notice, I find that the outstanding rent was not paid within the five-day grace period provided by section 46 of the *Act*.

Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was October 21, 2012.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect at 1 p.m. on November 15, 2012 as requested.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent including the \$700 rent shortfall for July 2012, and full rent for October 2012. I find that the landlord is also entitled to the rent and/loss of rent for November 2012, given that with the tenancy ending on November 15, 2012 and time needed to advertise and prepare the rental unit for a new tenancy, it would be a practical impossibility for the landlord to begin a new tenancy in November.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

July 2012 rent shortfall	\$ 700.00
November 2012 rent/loss of rent	800.00
Filing fee	<u>50.00</u>
Sub total	\$2,350.00
Less retained security deposit (No interest due)	<u>- 400.00</u>
TOTAL	\$1,950.00

Conclusion

The tenant's request to set aside the Notice to End Tenancy is dismissed without leave to reapply.

The tenant's request for monetary compensation for loss of use of facilities is dismissed with leave to reapply.

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on November 15, 2012.

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$1,950.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

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 07, 2012.

Residential Tenancy Branch