



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC CNR MNR MNSD FF
 CNC CNR OLC ERP RP RR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking Orders of Possession for cause and unpaid rent, and a Monetary Order for unpaid rent or utilities, to keep the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed seeking Orders to: cancel the notice to end tenancy for cause, for unpaid rent, for the Landlord to comply with the Act, regulation or tenancy agreement, for emergency repairs, for repairs to the unit site or property, and for reduced rent for services or facilities agreed upon but not provided.

The Landlords affirmed that they personally served the Tenant with copies of their application and Notice of Dispute Resolution hearing documents on November 21, 2012 at 11:05 a.m. They confirmed receipt of copies of the Tenant's application and amended application along with copies of the two notices to end tenancy.

Notwithstanding the fact this hearing was convened to hear matters pertaining to the Tenant's application for dispute resolution, based on the submissions of the Landlord, I find the Tenant was sufficiently served Notice of this proceeding, so I continued in her absence.

Issue(s) to be Decided

1. Should the Landlord be issued an Order of Possession?
2. Should the Landlord be granted a Monetary Order?
3. Should the Tenant's application be dismissed with or without leave to reapply?

Background and Evidence

The Landlords provided evidence which included, among other things, copies of: the tenancy agreement, a 1 Month Notice to end tenancy for cause issued October 16, 2012, a warning letter issued to the Tenant, and a 10 Day Notice for unpaid rent issued November 2, 2012.

The parties entered into a fixed term tenancy agreement that began on May 17, 2012 and ended November 30, 2012. Rent was payable on the first of each month in the amount of \$1,020.00 and on May 15, 2012 the Tenant paid \$510.00 as the security deposit.

The Landlords advised that the 1 Month Notice was posted to the Tenants door on October 16, 2012 and the 10 Day Notice was posted to her door on November 2, 2012 at 12:40 p.m. Rent remains unpaid for November and December 2012 and the Tenant continues to occupy the rental unit. The Landlord is seeking an Order of Possession and a Monetary Order for November and December 2012 rent in the amount of \$2,040.00.

Analysis

Landlord's application

Order of Possession – When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Landlord provided undisputed evidence that the Tenant has failed to pay the November and December 1, 2012 rent and continued to occupy the rental unit.

Based on the foregoing, and in the absence of the Tenant to dispute the Notice, I find the Tenant has breached the Act by failing to pay her rent. The Tenant is deemed to have received the 10 Day Notice three days after it was posted to her door therefore the effective date of the Notice is **November 15, 2012**, pursuant to section 90 of the Act. Accordingly, I find this tenancy ended as of the effective date and I approve the Landlord's request for an Order of Possession.

The Landlord has been award possession of the unit based on the 10 Day Notice. Therefore, there is no need to provide an analysis for the 1 Month Notice.

Claim for unpaid rent - The Landlord claimed unpaid rent of \$1,020.00 that was due November 1, 2012, pursuant to section 26 of the Act that stipulates rent must be paid in accordance with the tenancy agreement.

Based on the aforementioned, I find the Landlord has met the burden of proof and I award them **\$1,020.00** for unpaid rent for November 1, 2012.

Use & Occupancy – As noted above this tenancy ended **November 15, 2012**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for December 2012.

The Landlord will not regain possession of the unit until after service of the Order of Possession and will not collect rent until a suitable tenant is found. That being said, the Landlord has the obligation to attempt to re-rent the unit as soon as possible. Therefore I award the Landlord **\$510.00** (1/2 of December 2012 occupancy rate) for use and occupancy of the unit up to **December 15, 2012**. The Landlord is at liberty to make further application if they suffer a loss past this date.

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

November 1, 2012 unpaid rent	\$1,020.00
Use and Occupancy for Dec. 1-15, 2012	510.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,580.00
LESS: Security Deposit \$510.00 + Interest 0.00	-510.00
Offset amount due to the Landlord	<u>\$1,070.00</u>

Tenant's Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the Applicant Tenant, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the Applicant Tenant called into the hearing during this time. Based on the aforementioned I find that the Tenant has failed to present the merits of their application and the application is dismissed, without leave to reapply.

Conclusion

I HEREBY FIND the Landlords are entitled to an Order of Possession effective **Two Days upon Service to the Tenant**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$1,070.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be 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: December 03, 2012.

Residential Tenancy Branch