



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, MNSD, FF
Tenant: DRI, CNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution with the landlord seeking an order of possession and a monetary order and the tenant disputing a rent increase and seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and three agents for the landlord.

The tenant clarified at the outset of the hearing that she was not actually disputing a rent increase but rather the method the landlord had used in order to adjust her subsidy and the short notice given by the landlord. I amend the tenant's Application to exclude the matter of dispute an additional rent increase.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Section 46 of the *Act*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on September 15, 2006 for a month to month tenancy beginning on October 1, 2006 for the monthly economic rent of \$926.00 that included a subsidy of \$693.00 and a tenant's contribution of \$233.00 due on the 1st of each month with a security deposit of \$400.00 paid.

The tenancy agreement stipulates that the tenant is liable for economic rent as determined by the landlord from time to time and that the availability of and changes to subsidies to the tenant do not affect the economic rent.

The landlord submits that the usual practice with their tenants to complete an annual subsidy review to determine the amount of subsidy the tenant may be entitled to that is based on the number of occupants and financial circumstances for the tenants.

The landlord submits, however, that when there is any member of the household who is over 19 years old and not working they are required to complete their subsidy reviews every 6 months.

The landlord submits that for the subsidy review for the period from July 1 2011 to December 31, 2011 the tenant despite requesting documents from the tenant in May 2011 the tenant submitted some documents in June 2011 and some in July 2011 and then additional information in August 2011 and so her subsidy application was completed in October 2011.

The parties agree a subsidy review had been undertaken for the period of January 2012 to June 30, 2012. The tenant testified that she had left her documentation several times in the office mail slot but that for some reason the landlord never acknowledged receiving it. The tenant believes the agent, at the time, did not like the tenant and does not understand why these documents continued to go missing.

As a result the subsidy review for this period was not completed until July 2012 and the review for the period of July 1, 2012 to June 30, 2013 was underway. All documents were received by the landlord and the determination of subsidy for this period was made by August 2, 2012.

The parties agree that the following documents confirm the subsidy amounts from July 1, 2011 to the present:

- A letter dated October 12, 2011 for the period effective July 1, 2011 to December 31, 2011 the tenant's rent contribution was set at \$617.00;
- A letter dated July 26, 2012 for the period effective January 1, 2012 to June 30, 2012 the tenant's rent contribution was set at \$912.00;
- A letter dated August 2, 2012 for the period effective July 1, 2012 to June 30, 2013 the tenant's rent contribution was set at \$1,143.00.

The tenant submits that when she received the letters of July 26, 2012 and August 2, 2012 she was confused and was certain what it all meant. The parties agree that they met on September 25, 2012. The landlord submits that it was all explained to the tenant at that time and she understood that her contribution would be \$1,143.00, but even so the tenant did not submit her subsidy form agreement until November 2012.

The tenant submits that it was until 3 or 4 weeks later that the landlord clarified issues for her. The landlord confirmed the tenant paid rent in the amount of \$750.00 for October 2012 and \$650.00 for November 2012.

The parties also agree the tenant signed a repayment agreement for the amount of \$5,005.00 to be repaid at \$50.00 per month on November 12, 2012. The parties also agree the tenant has not paid any rent for the months of December 2012 and January 2013.

The tenant submits that she had not paid rent for December 2012 and January 2013 because she was awaiting the outcome of this hearing, but that she has the money. I ordered the tenant, during the hearing, that she must pay the rent when it is due and that she should provide the landlord with the rent for December and January immediately.

Analysis

While the rental unit is subsidized I find the tenancy agreement clearly outlines the tenant is responsible for the economic rent and that the subsidy provided requires the tenant to provide relevant occupant and income information in accordance with the requirements set out by the landlord and their funding agency.

As such, it remains the tenant's responsibility to *ensure* the landlord has the required documentation to determine any subsidy amounts that she may be entitled to. It is not sufficient for the tenant to say she dropped it off in the office mail slot, it is her responsibility to follow up and confirm the landlord received it.

In return the landlord is required to complete the subsidy assessment in a timely manner once all documentation is received. From the testimony and evidence before me I find the landlord has established the tenant has exhibited a pattern of delaying the submission of any documentation required and repeatedly requested by the landlord. As such, I find no errors in the landlord's approach to subsidy determination.

As a result, and in the absence of any dispute from the tenant as to the amounts of her rental contribution or the subsidy she is entitled to, I find the landlord has established that there was rent due to the landlord on the date the 10 Day Notice to End Tenancy was issued.

In addition and despite signing a tenancy agreement I find the tenant's actions of: not paying her rent contribution in any amount for the months of December 2012 and January 2013; not even attempting to pay rent contribution that was close to the amount determined for either the period of January 2012 to June 2012 (\$912.00) or the period July 2012 to December 2013 (\$1,143.00); and contacting the landlord after issuing a cheque to the landlord to make some payment towards the arrears and asking the landlord to not cash the cheque provide evidence of the tenant's unwillingness or inability to even pay the current rent that is due let alone any of the arrears.

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

As the tenant does not dispute the amount owed to the landlord I find the landlord has established the value of the rent owed to the landlord.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$6,691.00** comprised of \$6591.00 rent owed and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$400.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$6,291.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: January 03, 2013.

Residential Tenancy Branch

