



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Eviction Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: CNR

For the landlord: FF, MNDC, MNR, MNSD, OPR

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 cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice").

The landlord applied for authority to retain the tenant's security deposit, a monetary order for unpaid rent and for money owed or compensation for damage or loss 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 were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the applications or the evidence.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary Issues-At the outset of the hearing, the landlord requested an amendment to their application, saying that the only issues remaining from their original application was a request for monetary compensation for the December 2012 rent in the amount of \$1050.00 and for recovery of the filing fee.

Additionally, although the tenant requested cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent, the parties were previously in dispute resolution in a hearing conducted on January 11, 2013. That hearing resulted in an order of possession for the rental unit being granted to the landlord, with an effective end of tenancy date on February 28, 2012.

The landlord said that the order of possession will be or has been served upon the tenant and the tenant said that she has secured a new rental unit, effective for March 15, 2013. As the issue of the vacant possession of the rental unit has previously been decided by an Arbitrator, I decline to consider the tenant's application seeking cancellation of a Notice to end the tenancy, due to the legal principle of *res judicata*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order, for authority to retain the tenant's security deposit, and to recover the filing fee?

Background and Evidence

In the previous dispute resolution hearing on January 11, 2013, the parties reached a settlement of their respective issues, with the tenant presenting that the December 2012, rent of \$1050.00 was sent to the landlord via registered mail on January 10, 2013. The Decision mentioned that this was the only amount owing for the tenancy at that time.

The landlord submitted that she never received the mail and that the tenant still owed the rent for December 2012.

The tenant submitted that she sent the rent payment of \$1050.00 in cash by registered mail on January 10, 2013, after the landlord would not open her door to accept the cash payment.

The tenant submitted a statement from Canada Post showing that a letter to the landlord was inducted into their system on January 10, 2013; however Canada Post was unable to provide delivery confirmation or signature, with an apology.

After confirming that I had received her evidence and providing testimony, the tenant exited the telephone conference call hearing after 20 minutes, prior to its conclusion.

In response, the landlord said that she never refused to answer the door and that the tenant often appeared with other issues, for which the landlord responded.

The landlord also questioned whether or not the tenant would actually place that amount of cash in an envelope to be mailed.

Analysis

There is no dispute that the tenant owed rent of \$1050.00 for December 2012, as decided in the January 14, 2013 Decision. The dispute revolves around whether or not the said rent has been paid.

The tenant said the rent payment was mailed on January 10, 2013, as was mentioned at the previous hearing, and therefore did not owe the rent. The landlord said that she had not received the envelope.

I find that upon a balance of probabilities the landlord has not received the registered mail envelope mailed by the tenant. In reaching this conclusion, I was persuaded by the tenant's evidence, which contained information on the Canada Post letter showing an incorrect physical address for the landlord. I therefore find it likely that the envelope was undeliverable.

As I have concluded that landlord has not received payment for the December rent, I therefore find the landlord is entitled to a monetary award of \$1050.00.

I also find the landlord is entitled to recover the filing fee of \$50.00.

Due to the above, I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$1100.00, comprised of their monetary award of \$1050.00 for unpaid rent and the filing fee of \$50.00. I have enclosed the monetary order with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. Costs of enforcement may be recoverable from the tenant.

I was not provided information as to the amount the landlord holds as a security deposit on behalf of the tenant and therefore, I have made no provision for deducting this amount prior to awarding a monetary order.

I remind the landlord that the monetary order should be amended to \$50.00 if the landlord does receive the registered mail envelope containing \$1050.00 in cash prior to enforcing the monetary order.

Conclusion

I have declined to consider the tenant's application seeking cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent, as the issue of the vacant possession of the rental unit has previously been decided by another Arbitrator in dispute resolution.

The landlord's application has been granted and a monetary order for \$1100.00 has been granted to the landlord.

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: February 27, 2013

Residential Tenancy Branch

