



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MT,CNR, AS, OPR, MNR, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for Order of Possession for Unpaid Rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution. The details of the dispute section of the application included a request for unpaid rent and future rent loss.

The tenant applied for more time to cancel a Notice to end tenancy, to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, an order that she be allowed to sub-let the unit and to recover her filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

The tenant acknowledged receipt of the hearing package and evidence sent to her via registered mail on January 23, 2013.

The landlord stated that the male co-tenant was served with Notice of the hearing, sent via registered mail on January 23, 2013. A copy of the Canada Post receipt and invoice was supplied as evidence; the mail was not returned. The female co-tenant confirmed that the male co-tenant had not been removed from the tenancy agreement; he has not lived with her at the unit since September 2012. However, the landlord said that the male co-tenant had not given notice and had not provided any address; the landlord considered the male respondent as a current tenant, under the terms of the agreement and had not been notified that he was vacating.

Therefore, in the absence of evidence that the male respondent has terminated his obligations as a co-tenant, I find that he was sufficiently served with notice of the

hearing on the 5th day after the registered mail was sent to the rental unit address; January 28, 2013.

Preliminary Matters

The details of dispute section of the landlord's Application included a specific claim for unpaid December 2012 rent and unpaid January rent. The Application requested compensation for any future loss.

The landlord's application did not set out a specific claim for future losses and I have determined that any loss of rent revenue may be considered via another application. In the absence of a claim for damage or loss under the Act and a corresponding amount of that claim, the Application was not amended.

At the start of the hearing the tenant said that the landlord has possession of the unit; the details of possession will be referenced in the background and evidence and in my analysis.

As the tenant no longer resides in the rental unit the balance of her application was withdrawn.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent?

Is the landlord entitled to filing fee costs?

Background and Evidence

The parties agreed that a fixed-term tenancy commenced on June 1, 2012. Rent was \$1,550.00 per month, due on the 1st day of each month. On the first page of the tenancy agreement the parties all signed, extending the fixed-term from August 31, 2012 to August 31, 2013.

A security deposit in the sum of \$775.00 and a \$200.00 pet deposit were paid on May 12, 2012.

The tenant confirmed that the landlord is owed \$450.00 for December 2012 rent and \$1,550.00 for January 2013 rent. The tenant also agreed that the landlord may retain the deposits, in partial satisfaction of the claim.

The landlord stated that on February 5, 2013 he changed the locks to the rental unit the unit. The tenant said that she had given the landlord permission to enter the unit on February 5, 2013, on his own, to complete an inspection report. They were to meet later, to review the report, but this did not occur and when the tenant went to the unit,

she discovered the locks had been changed. The tenant stated she had in fact vacated the unit on February 2, 2013.

There was no dispute that a 10 Day Notice to End Tenancy for Unpaid Rent issued on January 7, 2013, was given to the tenant; the tenant's application indicated she received the notice on that date.

The parties both agreed that the male co-tenant had not been removed from the tenancy agreement; the landlord considered the male as a co-tenant.

Analysis

In relation to the end of the tenancy, I have considered the tenant's initial statement that she would now relinquish possession of the unit, in contrast to the submissions that the locks to the unit had been changed on February 5, 2013.

It was not until I questioned the parties during the hearing that it was established the landlord had effectively taken possession of the unit on February 5, 2013. Given the testimony that the tenant had given the landlord permission to enter on February 5, 2013, I find that up until that date she did have possession of the unit; otherwise the landlord would not have expected her permission to enter. Once the landlord changed the locks to the unit I find, pursuant to section 44(f) of the Act, that the tenancy was ended. The tenant has now confirmed that she has vacated and that the landlord has possession.

Based upon the acknowledgement of the tenant, I find that the tenant has not paid rent in the amount of \$450.00 for December 2012 and \$1,550.00 for January 2013 and that the landlord is entitled to compensation in that sum; \$2,000.00.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant agreed that the landlord should retain the deposits, in the sum of \$975.00 in partial satisfaction of the claim; therefore, pursuant to section 63(2) of the Act, I find that the landlord may retain the deposits and have set them off against the rent owed.

Based on these determinations I grant the landlord a monetary Order for the balance owed in the sum of \$1,075.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

Conclusion

The landlord is entitled to a monetary order for unpaid December 2012 and January 2013 rent; less the security and pet deposits.

The landlord is entitled to filing fee costs.

The tenant relinquished possession of the unit and withdrew the balance of her application.

The tenancy ended effective February 5, 2013.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 07, 2013

Residential Tenancy Branch

