



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR MNR MNDC FF

For the tenant: CNR MT DRI MNDC OLC OPT AAT RR O

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*”) after a decision dated April 4, 2013 determined that the landlord’s application be joined to the tenant’s application to be heard as a cross-application.

The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The tenant applied to cancel a Notice to End Tenancy for Unpaid Rent or Utilities, for more time to make an application to cancel a Notice to End Tenancy, to dispute an additional rent increase, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, for an order directing the landlord to comply with the *Act*, for an order allowing access to or from the unit or site for the tenant or the tenant’s guests, to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, and “other” although details of “other” in addition to what was already indicated in the tenant’s application were not made clear in the application.

The landlord, an assistant/translator for the landlord, a witness for the landlord and the tenant attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In the matter before me, the tenant indicated multiple matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to cancel the Notice to End Tenancy and her application for more time to cancel the Notice to End Tenancy. I find that not all the claims in the tenant's Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the Notice to End Tenancy and the tenant's application to for more time to apply to cancel the Notice to End Tenancy. The balance of the tenant's application is dismissed, with leave to re-apply. As this matter consists of a cross-application by the landlord, the landlord's application is also being considered.

Issues to be Decided

- Should the Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

A month to month tenancy agreement began on March 1, 2009. Monthly rent in the amount of \$1,200.00 was due on the first day of each month but was lowered in July 2010 to \$1,000.00. The tenant paid a security deposit of \$600.00 at the start of the tenancy which the landlord continues to hold.

The landlord is seeking \$2,000.00 in unpaid rent comprised of \$1,000.00 rent owing for March 2013 and \$1,000.00 rent owing for April 2013. The tenant confirmed that she has not paid rent for the months of March 2013 and April 2013.

The tenant confirmed receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) from the landlord on March 2, 2013 and dated the same date. The tenant disputed the 10 Day Notice on March 8, 2013. The 10 Day Notice indicates that \$1,000.00 in unpaid rent was due on March 1, 2013 and had an effective vacancy date for March 12, 2013.

The tenant stated that she did not dispute the 10 Day Notice within five days as she was waiting for money which did not arrive. The tenant stated that she has not paid rent for March 2013 and April 2013 as she was waiting for the result of the dispute resolution hearing.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Tenant’s application – The landlord issued a 10 Day Notice on March 2, 2013 for \$1,000.00 unpaid rent for March 2013. The tenant disputed that notice on March 8, 2013, which is one day outside the permitted timelines to dispute a 10 Day Notice which indicates “within five days” of being served a 10 Day Notice under section 46 of the *Act*. The tenant stated that she did not dispute the 10 Day Notice within five days as she was waiting for money which did not arrive. **I find** that the reason provided by the tenant is not a sufficient reason for failing to dispute the Notice within five days. Therefore, **I dismiss** the tenant’s application for additional time to dispute the 10 Day Notice in full, without leave to reapply.

Landlord’s application – The landlord is seeking an order of possession for unpaid rent based on the 10 Day Notice which was not disputed in accordance with section 46 of the *Act*, and a monetary order for unpaid rent in the amount of \$2,000.00. **I find** that the 10 Day Notice is valid as the tenant confirmed that rent was not paid for March 2013 or April 2013 as she was waiting for the result of the dispute resolution hearing. Therefore, **I uphold** the 10 Day Notice issued by the landlord which had an effective vacancy date of March 12, 2013 as it is valid. **I grant** the landlord an order of possession for unpaid rent **effective two (2) days after service on the tenant**. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord testified that the tenant has failed to pay rent of \$1,000.00 for March 2013 and \$1,000.00 for April 2013. The tenant confirmed this during the hearing. Section 26 of the *Act* requires that a tenant pay rent on the day that it is due in accordance with the

tenancy agreement. **I find** that the tenant breached section 26 of the *Act* by failing to pay March 2013 rent and April 2013 rent for a total amount of rent owing in the amount of \$2,000.00. Therefore, **I find** the landlord has met the burden of proof and is entitled to monetary compensation of **\$2,000.00** in unpaid rent.

As the landlord's claim had merit, **I grant** the landlord the recovery of their filing fee in the amount of **\$50.00**.

I find that the landlord has established a total monetary claim of **\$2,050.00** comprised of \$2,000.00 in unpaid rent, plus the \$50.00 filing fee. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, in the amount of **\$2,050.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I dismiss the tenant's application, without leave to reapply. The tenant is at liberty to reapply for the portions severed under Rule 2.3 of the Rules of Procedure described under Preliminary and Procedural Matters above.

I find that the landlord has proven their claim and is, therefore, entitled to an order of possession **effective two (2) days after service on the tenant**. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

I find that the landlord is entitled to monetary compensation pursuant to section 67 of the *Act*, in the amount of \$2,050.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

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: April 08, 2013

Residential Tenancy Branch

