



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, MNSD and FF
Tenants: CNR, DRI, OLC, LRE and FF

Introduction

This hearing was convened on applications by both the landlord and the tenant.

By application of May 15, 2013, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenants' door on May 3, 2013. The landlord also sought a monetary award for unpaid rent and utilities, and recovery of the filing fee for this proceeding. The landlord had applied for authorization to retain the security deposit in set off, but asked to defer this item to a possible future application.

By prior application made on May 6, 2013, the tenant sought to have the Notice to End Tenancy set aside, to contest an additional rent increase, to obtain an order for landlord compliance, an order limiting the landlord's access to the rental unit and recovery of his filing fee.

At the commencement of the hearing, the tenant advised that he was in the process of moving out of the rental unit and the move would be completed by May 31, 2013 and he provided an address for service. Therefore, the landlord stated he would no longer require the Order of Possession.

I noted also that the end of the tenancy would render the tenant's application moot as all items assumed a continuing tenancy. Therefore, the tenant's application is dismissed without leave to reapply.

Issue(s) to be Decided

This matter now requires a decision on whether the landlord is entitled to a Monetary Order for unpaid rent and utilities.

Background and Evidence

This tenancy began on February 1, 2013. Rent was originally \$2,000 per month but was reduced to \$1,700 when the parties made an arrangement under which the landlord could use the lower suite. The landlord holds a security deposit of \$1,000.

During the hearing, the landlord gave evidence that he had served the 10-day Notice to End Tenancy for unpaid rent on May 3, 2013. The tenant concurred that he had not, and still has not, paid the rent due on May 1, 2013.

The landlord also requested a Monetary Order for unpaid rent/loss of rent for June 2013, but as the hearing took place on May 30, 2013, I cannot entertain a claim for future rent.

The landlord also submitted a number of invoices for unpaid utilities but the tenant vigorously challenged the landlord's assertion that the tenant had agreed to pay utilities.

There is no written rental agreement.

Analysis

Section 26 of the Act states that tenants must pay rent when it is due irrespective of any perceived non-compliance with the *Act* or rental agreement by the landlord. Section 67 of the Act authorizes the director's delegate to determine an amount owed by one party to another and to order payment of that amount.

In the present matter, I find that the tenant owes the rent for May 2013 and award \$1,700 to the landlord.

With respect to the landlord's claim for unpaid utilities, in the absence of a written agreement to that effect and given the claims to the contrary by the tenant, I must find that the landlord has failed to meet the burden of proof that falls to a claimant. Therefore, the claims for utilities payments are dismissed without leave to reapply.

As the landlord's application has substantially succeeded, I find that he entitled to recover his \$50 filing fee for this proceeding from the tenant.

The landlord remains at liberty to make application for any damage to the rental unit ascertained when he has regained possession.

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$1,750** for service on the tenant. The sum is comprised of the rent for May 2013 and the landlord's filing fee.

While the landlord chose to reserve his claim on the security deposit, he is advised that if the tenant does not make payment of the monetary order by the end of the tenancy, section 38(3) of the *Act* permits the landlord to retain the amount ordered from the tenants' security deposit.

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: May 30, 2013

Residential Tenancy Branch

