



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPB MNR MNDC O FF
 CNR RP

Preliminary Issues

The Tenant signed into this proceeding three minutes late at 1:03 p.m. and stated that she was in a car on her cell phone. At that time I informed the Tenant what was discussed with the Landlord and we proceeded with the hearing.

At 1:11 p.m. the Tenant disconnected from the hearing at the time I was discussing the term of the tenancy agreement. I continued the hearing in the Tenant's absence and at 1:17 p.m. the Tenant signed back into the hearing and stated she was now at home. I informed the Tenant of the testimony that was provided by the Landlord in her absence and we continued with the proceeding, in accordance with the *Residential Tenancy Branch Rules of Procedure*.

Upon review of the Landlord's application for dispute resolution the Landlord confirmed their intent on seeking money owed or compensation for damage or loss under the act regulation or tenancy agreement, by writing "*2 Months rent since tenant did not vacated by April 30, 2013*" in the details of dispute on their original application. The Landlord affirmed that the Tenant continues to reside in the unit and he did not pay rent for April or May 2013.

Based on the aforementioned I find the Landlord's intention of seeking to recover the payment for use and occupancy or loss of rent, for a period after the tenancy ended in accordance with the 10 Day Notice, was an oversight and/or clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application. Therefore I amended the application, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlord and the Tenant.

The Landlord filed on May 2, 2013, seeking Orders of Possession for unpaid rent and for breach of an agreement and a Monetary Order for: unpaid rent and utilities; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; for other reasons; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on April 22, 2013, to cancel a Notice to end tenancy for unpaid rent and to have the Landlord ordered to complete repairs to the unit, site, or property.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 10 Day Notice be cancelled or upheld?
2. If upheld, should the Landlord be granted an Order of Possession?
3. Should the Landlord be awarded a Monetary Order?
4. Should the Landlord be ordered to make repairs to the unit, site, or property?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: her written submission; proof of service information; a utility bill; letters written to the Tenant; a 10 day notice to end tenancy; and the tenancy agreement.

The Tenant submitted documentary evidence which included, among other things, copies of: Canada Post receipts; a 10 day notice to end tenancy; the tenancy agreement; the Tenant's written submission; and letters received from the Landlord.

The parties confirmed that they entered into a tenancy agreement that began on December 10, 2012. The tenancy agreement indicated the tenancy would be for 4 ½ months ending on April 30, 2013, and the parties initialled section (ii) indicating the tenant was required to move out at the end of the fixed term. The parties also checked off section (i) which indicates the tenancy may continue on a month- to-month basis or another fixed term of time [sic]. The Last four words were underlined on the actual

tenancy agreement. Rent is to be payable on the 31st of each month in the amount of \$900.00 and a security deposit of \$450.00 was paid by December 11, 2012.

The Landlord testified that they had originally agreed to a fixed term tenancy that would end on April 30, 2013, because the house was up for sale. They discussed how if the house sold that the Tenant would be entitled to one month's free rent as required by the Act. Then on March 22, 2013, the Landlord personally served the Tenant with a letter that indicated she was not going to renew the tenancy after April 30, 2013, and the Tenant would be required to move out.

The Landlord stated that when she went to the unit to collect April 1st rent the Tenant told her she did not have to pay rent because her last month of rent is to be free as per their agreement. The Landlord said she informed the Tenant that the house has not sold therefore she must pay the rent.

The Landlord said she attended the unit on April 11, 2013 with a male friend and witnessed the male personally serve the Tenant with the 10 Day Notice and a letter she wrote to the Tenant explaining she has five days to pay the rent. The Tenant has not paid the April or May 2013 rent and continues to occupy the rental unit. The Landlord has applied for an Order of Possession and the two month's rent. She noted that the utility bill has since been paid by the Tenant.

The Tenant testified and confirmed that she has not paid rent for April or May 2013. She stated that she did not pay April rent because she is fighting the eviction that was noted in the March 22, 2013 letter because she disagrees with the interpretation of the end date of her tenancy agreement. She confirmed that she continues to occupy the rental unit and has not paid anything towards May 2013 rent.

When asked why she has not paid the April and May rent she stated again that she was disputing the end date of the tenancy and that they were in arbitration so she did not think she had to pay rent. She disputed whether the house has sold or not or if she could get the free month's rent because she would not know if it had sold.

The Landlord testified that the house has not sold.

Analysis

Landlord's Application

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant received the 10 Day Notice on April 11, 2013, and the effective date of the Notice is **April 21, 2013**, in accordance with the Act. The Tenant did not pay the rent and dispute the Noticed. The evidence proves the Tenant did not pay rent for April 2013; she did not have an Order allowing her to withhold payment of rent; and in the absence of proof to the contrary, the house has not sold. Therefore, I find the Tenant to be in breach of section 46 of the Act and I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent of \$900.00 that was due on April 1, 2013. The Tenant failed to pay rent in accordance with the tenancy agreement which is a breach of section 26 of the Act. Accordingly, I award the Landlord a Monetary Award for unpaid rent of **\$900.00**.

As noted above this tenancy ended **April 21, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for May 2013, not rent. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and they will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of May 2013, in the amount of **\$900.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Tenant's Application

Based on the foregoing information I have upheld the 10 Day Notice and granted the Landlord an Order of Possession. Therefore, I find the Tenant's request to cancel the 10 Day Notice to have no merit, and her request is hereby dismissed, without leave to reapply.

As I have found this tenancy to have ended on April 21, 2013, the Tenant's request for repairs are moot. Therefore, I dismiss the request, without leave to reapply.

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenant.

In the even the Tenant does not comply with this Order it may be filed with BC Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order in the amount of **\$1,850.00** (\$900.00 + \$900.00 + \$50.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The Tenant's application is HEREBY DISMISSED in its entirety, without leave to reapply.

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 22, 2013

Residential Tenancy Branch