



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, MNDC, OLC, OPT, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an applications filed by both the tenant and the landlord.

The tenant is seeking to cancel a Notice to End Tenancy given for unpaid rent, a monetary Order, an Order that the landlord comply with the Act, an Order of Possession and recovery of the filing fee paid for this application.

The landlord is seeking an Order of Possession, a monetary Order for unpaid rent, an Order to be allowed to retain the security deposit and recovery of the filing fee paid for this application.

Both parties appeared and gave evidence under oath.

Issue

Should the Notice to End Tenancy be cancelled? If not, should the landlord be compelled to comply with the Act, should the tenant receive an Order of Possession and a monetary Order for compensation or loss and/or for recovery of the filing fee paid for this application?

Background, Analysis and Findings

This tenancy began in March 2013. According to the Tenancy Agreement submitted in evidence rent was fixed at \$1,100.00 per month payable in advance on the 31st day of each month and the tenant paid a security deposit of \$500.00.

The parties agree that the landlord served a Notice to End Tenancy for unpaid rent on May 11, 2013 in person. The tenant had already filed an Application for Dispute Resolution on May 9, 2013 seeking compensation for damage or loss, an Order of

Possession for the tenant and an Order that the landlord comply with the Act. On May 15, 2013 she amended that application on May 15, 2013 to include an application seeking to dispute the Notice to End Tenancy.

The Notice to End Tenancy filed in evidence shows that the landlord was seeking rent due May 1, 2013 in the sum of \$1,100.00. The tenant agrees she has not paid rent for May. The tenant says the landlord deactivated her FOB and she was locked out of the rental unit from May 17 to 23, 2013 and this is why she did not pay her rent. In her written submissions the tenant says her FOB was deactivated for four days and she is seeking compensation for 4 days of being unable to gain entry to her suite.

The tenant also says that the landlord made an agreement whereby she said rent could be paid on the 15th not on the 31st as set out in the Tenancy Agreement. In any event, the tenant agrees she has not paid rent for May nor has she paid rent for June 2013.

The tenant is seeking compensation in the sum of \$641.94 for the loss of use of her rental unit while her FOB was deactivated during which time she says she could not gain entry to her suite.

The landlord testified that she did not deactivate the tenant's FOB. The landlord testified that the FOB was automatically deactivated by the management company that represents the strata corporation for the building because the tenant was smoking marihuana in the rental building.

The landlord says the tenant has always been late paying her rent since the start of this tenancy and that rent remains outstanding for May and June 2013. The landlord seeks recovery of those arrears as well as an Order of Possession.

Background and Findings

With respect to the tenant's evidence that she did not pay the rent because her FOB was deactivated, even if this were the case Section 26(1) of the *Residential Tenancy Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Therefore if a tenant does not pay rent and does not have a right under the Act to deduct all or a portion of the rent a landlord may issue a 10 day Notice to End Tenancy for unpaid rent. Once served with that Notice a tenant has 5 days within which to pay the rent or make an application seeking to dispute the Notice. Tenants may be successful disputing a Notice where they have proof that the subject rent was paid or when they have an Order from an Arbitrator giving them permission to forgo paying all or a portion of the rent. In this case there has been no evidence submitted by the tenant that she had such an Order.

With respect to the argument that there was a verbal agreement that rent could be paid on the 15th as opposed to the 31st which is set out in the Tenancy Agreement, any agreement altering a term of a Tenancy Agreement must be in writing. In any event, the evidence shows that rent for May remains outstanding having not been paid on either April 31 or May 15.

While the tenant did make an application seeking to dispute the Notice within the proper time frame, the parties agree that the rent requested in the Notice remains outstanding. In fact, the evidence shows that further rental arrears have now accrued. As there is outstanding rent, the landlord is entitled to an Order of Possession. The tenant's application seeking an Order of Possession is therefore dismissed.

As this tenancy is ending the tenant's application for an Order that the landlord be compelled to comply with the Act is also dismissed.

With respect to the tenant's testimony that she was locked out of her suite for 4 days (as stated in her written submissions) or 7 days (as stated at the hearing), the landlord says that the tenant was locked out by the strata corporation for a violation of the strata rules and/or an alleged illegal activity not by the landlord. Neither a landlord nor a strata corporation on behalf of a landlord or exclusive of a landlord's permission may restrict entry to a tenant to his or her rental unit. I find that the tenant is therefore entitled to compensation. However, because the tenant's evidence with respect to how long her FOB was de-activated is contradictory, I will use the first number of days claimed (4 days) and I will calculate her loss on a per diem basis: $\$1,100.00/31 = \$35.48 \times 4 = \$141.93$.

As both parties have paid filing fees to make their claims I will make no award with respect to recovery of the filing fees.

Calculation of Monetary Award in Favour of Landlord

Rental Arrears May	\$1,100.00
Rental Arrears June	1,100.00
Less Sum awarded to Tenant	-141.93
Less Security Deposit	-500.00
Balance due and owing by tenant to landlord	\$1,558.07

Conclusion

The landlord is provided with a formal monetary Order. This is a final and binding Order enforceable as any Order of the Provincial Court of British Columbia.

The landlord is provided with a formal copy of an Order of Possession. This is a final and binding Order as any Order of the Supreme Court of British Columbia.

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*.

June 5, 2013