



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, MNDC and FF
Tenant: CNR and FF

Introduction

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

By application of June 12, 2013, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent and/or utilities served on May 21, 2013. The landlord also sought a monetary award for the unpaid amount.

By prior application of May 31, 2013, the tenant sought more time to bring application, to have the notice set aside and to recovery the filing fee for this proceeding.

Issue(s) to be Decided

This application requires a decision on whether the tenant is entitled to an extension of time to make application to contest the notice, whether the notice should be upheld or set aside and whether the landlord is entitled to a monetary award for unpaid rent/utilities.

Background, Evidence and Analysis

This tenancy began on March 15, 2013. Rent is \$1,135 due on the first day of the month plus two-thirds of utilities and the landlord holds a security deposit of \$567.50 paid at the beginning of the tenancy.

With respect to the tenant's request for an extension on the five-day time limit set by section 46 of the *Act*, section 66 of the *Act* provides that an extension may be granted only in exceptional circumstances. The tenant stated that her application was out of time because she was not aware of the five day limit, a reason that would not permit me to grant an extension. Therefore, the tenant's application was dismissed and the hearing proceeded to consider the Notice to End Tenancy on its merits.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of May 21, 2013 had been served after the tenant had failed to pay utilities due on May 1, 2013, but the parties concur that she did pay \$1,140, an overpayment of \$5.00 on the rent. The landlord redirected \$148.28 of that toward utilities and served the Notice to End Tenancy on ground of the resultant rent shortfall. The June 2013 rent has been paid.

Section 46(6) of the *Act* provide that, if:

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

In the absence of written demand letter for payment of the utilities 30 days before service of the Notice, I find the Notice to End Tenancy is unenforceable as it was based on unpaid utilities.

Settlement Agreement

Section 63 of the *Act* provides that:

(1) The director may assist the parties, or offer the parties an opportunity, to settle their dispute.

(2) If the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or an order.

In the present matter, the parties opted to avail themselves of the opportunity to settle this dispute under the following terms:

1. The parties have agreed by mutual consent that the tenancy will end on June 30, 2013 and that the landlord will be issued with an Order of Possession in support of that agreement;
2. The tenant agrees to settle the outstanding utilities by granting the landlord consent to retain the amounts from her security deposit.

On item 2 of the agreement, I note that the tenant has demanded to see the invoices in question, but the landlord has refused to provide them on the grounds that they contain private information. The landlord must provide the tenant with copies of the invoices to prove amounts claimed but may black out personal information and leave billing periods, dates and amounts for review by the tenant.

Conclusion

By mutual agreement, the landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia for service on the tenant.

The tenant agrees to pay outstanding utilities by deduction from the security deposit at the conclusion of the tenancy.

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: June 21, 2013

Residential Tenancy Branch