



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant's application: CNR

Landlord's application: OPR; MNR; MNSD

Introduction

This Hearing was convened to consider cross applications. The Tenant seeks to cancel a Notice to End Tenancy for Unpaid Rent issued June 3, 2013 (the "Notice").

The Landlord seeks an Order of Possession; a Monetary Order for unpaid rent; and to retain the security deposit in partial satisfaction of her monetary award.

The Landlord and the Tenant gave affirmed testimony at the Hearing.

It was determined that the parties served each other with their Notice of Hearing documents by registered mail. Copies of the registered mail receipts were provided in evidence.

Issues to be Decided

- Should the Notice be upheld or canceled?
- Is the Landlord entitled to a monetary award for unpaid rent?

Background and Evidence

Monthly rent is \$1,450.00, due on the first day of each month. The Tenant's rent is paid by a third party (the "Ministry"), directly to the Landlord.

The Landlord testified that the rent was not paid in full for May and June, 2013, and that \$791.86 remains owing. The Landlord stated that she served the Tenant with the Notice on June 3, 2013, by handing the Notice to the Tenant with a witness present. The Tenant acknowledged service in this fashion.

The Tenant's advocate explained that there was a mix-up at the Ministry and that the Landlord has received full payment for July, 2013. The Landlord agreed that July's rent has been paid in full, directly from the Ministry.

The Tenant's advocate stated that the parties were at a Hearing on June 3, 2013, which was convened to hear the Tenant's application for compensation for damage or loss and Orders for emergency and regular repairs at the rental unit. She stated that the Tenant was successful in being awarded \$750.00 in compensation and was provided with Orders that the Landlord comply with the Act and make repairs. The Tenant's advocate stated that the Tenant attempted to call the Landlord to see if she could just pay the Landlord the difference between what she owed and her monetary award, but the Landlord would not answer her call.

The Landlord stated that she tried to call the Tenant, but that her phone number was not in service. She stated that she called another number and was advised that the Tenant did not live there.

The Tenant's advocate stated that she had no trouble calling the Tenant earlier this morning and suggested that the Landlord call the advocate if she needed to communicate with the Tenant. The Tenant's advocate provided her telephone number to the Landlord during the Hearing.

The Tenant stated that the emergency repair orders are still not done. The Landlord stated that she could not get a hold of the Tenant to find out when she would be home so she could make an appointment with the repairman.

Analysis

Section 26 of the Act provides that rent must be paid when it is due, unless a tenant has a right under the Act to deduct rent (for example, an Order of the Director).

In this case, the Tenant was provided an Order after the Notice was issued and served and therefore the Tenant had no right under the Act to withhold rent. However, the Landlord has been paid rent in full for the month of July, 2013. The Landlord did not issue the Tenant a receipt for "use and occupancy only" or a letter indicating that the payment did not reinstate the tenancy. Therefore, I find that the tenancy has been reinstated.

The Tenant's application is **granted**. The Notice to End Tenancy is canceled. The tenancy will remain in full force and effect until it is ended in accordance with the provisions of the Act.

The Landlord's application for an Order of Possession is **dismissed**.

I find that the Landlord is entitled to a monetary order in the amount of **\$791.86** for unpaid rent. The tenancy is continuing and therefore, the Landlord's application to set off the security deposit in partial satisfaction of her monetary award is **dismissed**.

The Landlord is hereby provided a Monetary Order in the amount of \$791.86. The Tenant was provided a Monetary Order in the amount of \$750.00 as a result of the former Hearing. **For clarification, the Tenant may set off her monetary award from the rent due to the Landlord, leaving a balance owing to the Landlord of \$41.86.**

The Landlord was advised of the provisions of Section 29 of the Act. Both parties are encouraged to make themselves acquainted with their rights and responsibilities under the Act. An information sheet accompanies this Decision, which provides the link to the Residential Tenancy Branch's web site. The web site has links to the Residential Tenancy Act and Regulation as well as A Guide for Landlords and Tenants in British Columbia.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy issued June 3, 2013, is **granted**.

The Landlord's application for an Order of Possession is **dismissed**.

I hereby provide the Landlord with a Monetary Order in the amount of **\$791.86** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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: July 12, 2013

Residential Tenancy Branch

