



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNR, MT

For the landlord: MNSD, OPR, MNR, MNDC, FF

Introduction

This hearing dealt with cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) and for an order granting more time to make an application to cancel a notice to end tenancy.

The landlords applied for a monetary order for money owed or compensation for damage or loss and for unpaid rent, for an order of possession for the rental unit due to unpaid rent, for authority to retain the tenant’s security deposit and to recover the filing fee for the application.

The parties appeared and the hearing process was explained. The parties were given an opportunity to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue-Although the tenant’s application for dispute resolution listed only the name of the attending tenant as applicant, the landlords’ application for dispute resolution listed the attending tenant and an additional tenant, who was listed on the

tenancy agreement; however, as that tenant did not sign the tenancy agreement, I have not included that name for further consideration.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

Are the landlords entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, for authority to retain the tenant's security deposit, and to recover the filing fee?

Background and Evidence

The written tenancy agreement provided by both parties shows that the tenancy began on May 22, 2013, that monthly rent was \$900, and that a security deposit of \$450 was due to be paid on May 31, 2013.

The landlord stated that the tenant never paid a security deposit. The tenant said that she had 30 days to pay.

Pursuant to the Residential Tenancy Branch Rules of Procedure, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

The landlord stated that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent by posting it on the tenant's door on July 2, 2013, listing unpaid rent of \$900 due on June 22, 2013, a "damage" deposit of \$450 being due, and \$69.72 in unpaid utilities.

The tenant acknowledged receiving the Notice on July 2, 2013.

The effective move out date listed on the Notice was July 12, 2013.

The landlord submitted that the tenant has not made a rent payment since issuance of the Notice and that she owed rent for June, July and August, of \$900 each.

The landlord further submitted that the tenant owed \$69.72 in unpaid utilities and the tenant agreed that this amount was owed.

In response, the tenant claimed that she owed rent only for the months of July and August, as she paid rent of \$900 for June, on May 22. In explanation, the tenant said

that although she moved into the rental unit early, on May 22, her agreement with the male landlord, who was not present at the hearing, was that the rental period was from the first of each month until the last day of each month, and therefore rent was due on the first day of each month.

The tenant further explained that in lieu of paying a prorated rent for May 22-31, the male landlord said that she could clean the rental unit and the carpet.

The tenant did state that she was vacating the rental unit by the end of the weekend following the hearing.

In response to the tenant's submission, the landlord agreed that her husband met with the tenant at the rental unit, that she, the landlord, was not present, and that the tenant could clean the rental unit; however, the landlord said the tenant did not clean the rental unit.

I note that the written tenancy agreement does not state a day of the month on which the monthly rent is due.

Analysis

Landlords' Application:

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair," as defined in section 33 of the Act. As the tenant has not submitted evidence that any emergency repairs necessary were undertaken, she has not met this criterion.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenant disputed the Notice; however when a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

In the case before me, I am satisfied that the tenant owed the landlord rent when the Notice was issued and that she did not pay all or any of the rent owed to the landlord within five days of receiving the Notice.

Therefore, I find the tenancy has ended for the tenant's failure to pay rent and the landlords are entitled to regain possession of the rental unit.

I find that the landlords are entitled to and I therefore grant an order of possession for the rental unit effective 2 days after service upon the tenant.

As to the landlords' monetary claim, in the case before me, the written tenancy agreement is silent as to the day of the month in which rent is due; however the tenant provided evidence which could not be disputed by the attending landlord that the agreement she had with the male landlord was that rent was payable on the first day of each month.

I therefore, on a balance of probabilities and the undisputed testimony of the tenant, find that the monthly rent was due on the first day of each month, and that when the tenant paid rent of \$900 on May 22, this rent was applicable to the month of June.

As there was no dispute that the tenants failed to pay monthly rent for July and August 2013 of \$900 each month, I find the landlord is entitled to a monetary award of \$1800.

I also find the landlord is entitled to a monetary award of \$69.72 for unpaid utilities, due to the documentary evidence and the tenant's confirmation.

I find the landlord provided inconclusive evidence as to whether the tenant owed a prorated rent for the month of May as the male landlord making the agreement with the tenant was not in attendance. I therefore do not award the landlords compensation for the month of May.

I also do not award the landlords \$450 for the tenant's security deposit, as this sum is held as security by the landlords for potential monetary issues at the end of the tenancy. Therefore it would not be appropriate for me to order that tenant pay the security deposit, only so that the landlords could handle the security deposit in accordance with section 38 of the Act, by deducting this sum in partial satisfaction of their monetary award.

I allow the landlords recovery of the filing fee of \$50.

I find that the landlords are entitled to a monetary award of \$1919.72, comprised of unpaid rent of \$900 for July 2013, unpaid rent of \$900 for August 2013, \$69.72 in unpaid utilities and recovery of the filing fee of \$50.00.

Tenant's application:

Due to the above, the tenant's application for dispute resolution seeking a cancellation of the Notice is dismissed without leave to reapply as I find the Notice to End Tenancy issued is valid and enforceable.

Conclusion

I grant the landlords a final, legally binding order of possession for the rental unit, which is enclosed with the landlords' Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon them, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$1919.72, which I have enclosed with the landlords' Decision.

Should the tenant fail to pay the landlord this amount without delay after the order has been served upon her, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

The tenant's application is dismissed, 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: August 09, 2013

Residential Tenancy Branch

