



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ardent Properties Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, OPR, MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order of possession for the rental unit due to alleged cause and due to unpaid rent, for authority to retain the tenant's security deposit and pet damage deposit, a monetary order for money owed or compensation for damage or loss and unpaid rent or unpaid utilities, and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence 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.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to alleged cause, monetary compensation, authority to retain all or part of the tenant's security deposit and pet damage deposit, and to recover the filing fee?

Background and Evidence

The landlord, a property management company, said that there is no written tenancy agreement as the owners from whom they took over management of the rental unit failed to provide one. The landlord gave evidence that this tenancy began on January 1, 2013, and monthly rent was \$1300, due on the first day of the month.

The tenant confirmed this information.

The landlord said that in addition, the tenant failed to pay a security deposit and a pet damage deposit, although both were owed.

The landlord submitted evidence that they served the tenant with a 1 Month Notice to End Tenancy for Cause on May 23, 2013, by registered mail, listing an effective end of tenancy of June 30, 2013.

Section 90 of the Act states that documents served by registered mail are deemed delivered five days later. Thus the tenant was deemed to have received the Notice on May 28, 2013, and the tenant did not dispute that she received the Notice.

The Notice explained that the tenant had ten days to dispute the Notice. It also explains that if the tenant did not file an application to dispute the Notice within ten days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice.

The landlord gave evidence also they have issued multiple 10 Day Notices to End Tenancy for Unpaid Rent or Utilities (the "Notice") to the tenant, further supporting the cause listed on the Notice that the tenant had made repeated late payments of rent.

The landlord's monetary claim included unpaid rent for the months of May, June, July, or August 2013.

The landlord has also in the hearing claimed the amount of \$650 each for the security deposit and the pet damage deposit which was not paid by the tenant.

In response, the tenant agreed that rent for the four months listed above was not paid; however, the tenant said that she sent an email to one of the landlord's agent in May, seeking repairs to the rental unit and to make the suite legal. The tenant said that she never heard from the landlord's agent and that the repairs were never made.

Analysis

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

I find the tenant was served a 1 Month Notice to End Tenancy for Cause, did not apply to dispute the Notice within ten days of service and is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective two days after service of the order upon the tenant.

As to the landlord's monetary claim for unpaid rent, 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 a deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act. As the tenant has not submitted evidence under Sec. 33 of the Act that any alleged repairs were necessary for the health and safety reasons or that there were any emergency repairs which were urgent, she has not met this criteria.

I find that the tenant owed rent pursuant to the verbal tenancy agreement for the months of May, June, July and August, and did not pay. I therefore I find the landlord is entitled to a monetary award of \$5200 (\$1300 each month).

As to the landlord's claim for the security deposit and pet damage deposit, the security deposit is held as security by the landlord for any liability or obligation of the tenant respecting the residential property and must be dealt with at the end of a tenancy in accordance with section 38 of the Act. For instance, had the landlord collected a security deposit at the beginning of the tenancy, as directed by section 20 of the Act, the landlord could have made application at the end of the tenancy to retain the security deposit in satisfaction or partial satisfaction of any monetary award, such as in this case, for unpaid rent. The security deposit and the pet damage deposit are not debts owed to the landlord at the end of a tenancy and to which they may keep separate and apart from any monetary award.

The remedy for the landlord in the event the tenant failed to pay the security deposit or the pet damage deposit within 30 days after they are required to be paid under a tenancy agreement is to issue the tenant a notice to end the tenancy pursuant to section 47 of the Act.

Due to the above, I find that the landlord is not entitled to a monetary award for the security deposit and the pet damage deposit, as these are sums held in trust by the landlord and would have to be returned to the tenant.

I find the landlord's application contained merit and I award them recovery of the filing fee of \$50.

Due to the above, I find the landlord is entitled to a total monetary award of \$5250, for unpaid rent of \$5200 and the filing fee of \$50.

Conclusion

The landlord's application for an order of possession for the rental unit is granted and the landlord's application monetary compensation is granted in part.

I grant the landlord a final, legally binding order of possession, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the

terms of the order, 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 landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$5250, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary 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.

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* and is being mailed to both the applicant and the respondent.

Dated: August 08, 2013

Residential Tenancy Branch

