



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlords' application: OPR; MNDC; MNR; O

Tenant's application: CNR

Introduction

This Hearing was convened to consider cross applications. The Tenant seeks to cancel a Notice to End Tenancy for Unpaid Rent issued July 4, 2013 (the "Notice").

The Landlords seek an Order of Possession; a Monetary Order for unpaid rent and utilities; compensation for damage or loss under the Act, regulation or tenancy agreement; and other orders.

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

It was determined that the parties served each other with their Notice of Hearing documents and documentary evidence.

Preliminary Matters

The Landlords' Application for Dispute Resolution indicates that they are seeking "other" relief; however, they did not provide sufficient details in their Application with respect to what other relief they were seeking. When a party seeks "other" relief, the Application for Dispute Resolution requires the Applicant to provide details in the "Details of Dispute Resolution" section. No details were provided. Therefore this portion of the Landlords' application is dismissed.

Issues to be Decided

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

Background and Evidence

The rental unit is the upstairs suite of a house. On March 5, 2013, the parties signed a one year lease, a copy of which was provided in evidence. The term of the lease was March 15, 2013 to April 1, 2014. Monthly rent is \$1,300.00, due the first day of each month. The Tenant is required to pay ½ of the utility bills. The Tenant paid a security deposit in the amount of \$650.00 at the beginning of the tenancy.

The Landlord served the Tenant with the Notice by registered mail sent July 6, 2013. She also left a copy of the Notice in the Tenant's mail box on July 6, 2013. The Tenant stated that she did not receive the registered mail document and that she was not sure when she got the Notice. The Tenant filed her Application to dispute the Notice on July 10, 2013.

The Tenant stated that she has not paid rent for July or August because there are bugs in the rental unit and repairs that need to be done.

The Landlord stated that the Tenant has not paid her share of utilities, either. The Landlord provided copies of the utility bills in evidence.

The Tenant stated that she had not seen the bills until she was served with the Landlords' evidence. She submitted that she should only pay 40% of the utilities because she and one other person were living upstairs, and the downstairs suite had four people in it.

The Tenant stated that the Landlords have already re-rented the rental unit and has tenants ready to move in. She said she knows this because they have been harassing her to leave.

Analysis

Section 26(10) of the Act states:

Rules about payment and non-payment of rent

- 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.

[my emphasis added]

I explained to the Tenant that if she felt that she was entitled to compensation, her remedy would have been to file an Application seeking orders. I find that the Tenant had no right under the Act to deduct all or a portion of the rent.

Therefore, I dismiss the Tenant's application to cancel the Notice. The Notice is upheld.

I find that the Notice was served on July 10, 2013, the day that the Tenant filed her application to cancel it. Therefore, I find that the tenancy ended on July 20, 2013, and the Tenant is overholding. I hereby provided the Landlords with an Order of Possession **effective 2 days after service of the Order upon the Tenant.**

I find that the Landlords are entitled to unpaid rent for the month of July, 2013, in the amount of **\$1,300.00.**

The Landlord did not deny that they have tenants ready to move into the rental unit and therefore they may recover some of their loss of revenue for the month of August from their new tenants. Therefore, I dismiss this portion of the Landlords' application **with leave to re-apply.**

The Tenant signed the tenancy agreement, indicating that she was responsible for 50% of the utilities. Therefore, based on the copies of the utility bills provided, **I find that the Tenant owes the following sum for unpaid utilities up to and including June 25, 2013:**

Hydro bill (February 27 to April 25, 2013) = \$179.12	
\$179.12/58 days = \$3.09 per day	
Tenant's share (March 15 – April 25) = 42 days	
(42 days x \$3.09 per day) / 2	\$64.89
Hydro bill (April 26 to June 25, 2013) = \$134.03	
Tenant's share (\$134.03/2)	\$67.02
Gas bill (February 27 to March 26, 2013) = \$117.05	
\$117.05/28 days = \$4.20 per day	
Tenant's share (March 15 – March 26) = 11 days	
(11 days x \$4.20 per day) / 2	\$23.10
Gas bill (March 26 to April 25, 2013) = \$89.12	
Tenant's share (\$89.12/2)	\$44.56

Gas bill (April 25 to May 27, 2013) = \$56.46	
Tenant's share (\$56.46/2)	\$28.23
Gas bill (May 27 to June 25, 2013) = \$42.42	
Tenant's share (\$42.42/2)	<u>\$21.21</u>
TOTAL	\$249.01

Pursuant to the provisions of Section 72 of the Act, the Landlords may apply the security deposit in partial satisfaction of their monetary award.

I hereby provide the Landlords with a Monetary Order, calculated as follows:

Unpaid rent for July, 2013	\$1,300.00
Unpaid utilities to June 25, 2013	\$249.01
Less security deposit held by Landlords	<u>-\$650.00</u>
TOTAL	\$899.01

Conclusion

The Tenant's application to cancel the Notice to End Tenancy issued July 4, 2013, is dismissed.

I hereby provide the Landlords with an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlords with a Monetary Order in the amount of **\$899.01** 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: August 14, 2013

Residential Tenancy Branch