



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 353806 B.C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

Background and Evidence

The landlord gave the following testimony:

The tenancy agreement was signed on March 29, 2013. Rent in the amount of \$850.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$425.00. The tenant was to provide a pet deposit but never did. The landlords applied half of May's rent to the cover the pet deposit. The tenant failed to pay rent in the month(s) of June and on June 10, 2013 the landlord served the tenant with a notice to end tenancy. The tenant further failed to pay rent in the month(s) of July and August.

The tenant gave the following testimony:

The tenancy began on or about April 5, 2013. The tenant stated that the amount of unpaid rent on the notice to end tenancy is incorrect as the landlords applied half of the May's rent to cover the pet deposit without her agreement. The tenant stated that the building is illegal and that the landlord lacks an "occupancy permit". The tenant confirmed that she did not pay the rent for the months of June – August. The tenant stated "of course I didn't pay, everyone is lying and the place is a total fraud".

Analysis

Both parties provided testimony and evidence that was considered when making a decision and were given full opportunity to present their position. This was a highly contentious hearing as the relationship between these two parties is acrimonious and hostile. The tenant was extremely upset during the hearing and was cautioned about her behaviour and demeanour throughout. I made numerous attempts to have the tenant address the claims as made by the landlord, as the landlord is the only applicant in this matter but the tenant was intent on giving testimony on issues that were not before me. It was made very clear to both parties that if there are other unresolved issues between these parties, they are both at liberty to file a separate application for a dispute resolution hearing.

The tenant felt that the rules of procedure allowed her to defend herself and that she was entitled to conduct herself in the manner that she chose. It was explained numerous times to the tenant that she would be given every opportunity to provide her testimony and explain her position. The tenant however repeatedly interrupted the landlords' agents when they were giving testimony and felt that they were not entitled to be part of this hearing according to the rules of procedure. She was unable to explain or provide the section of the rules of procedure that would prohibit a landlord from having an agent appear for them. The tenant wished to continue with the hearing but only if she could be heard and not the landlord or myself.

I made further attempts to have the tenant address the unpaid rent and her response was: “of course I didn’t pay the rent, why would I pay to be in an illegal building, they’re all liars”.

Section 26 of the Act addresses the matter before me.

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.

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

- (a) seize any personal property of the tenant, or
- (b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

- (a) the landlord has a court order authorizing the action, or
- (b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

The tenant did not have an order from the Branch or the agreement of the landlord to withhold any rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an order of possession. The tenant must be served with the order of possession. Should the

tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As for the monetary order, I find that the landlord has established a claim for unpaid rent of June-August for \$2550.00 in unpaid rent. I agree with the tenant that the May rent was paid in full. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the \$425.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2175.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$2175.00. The landlord may retain the security deposit.

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 08, 2013

Residential Tenancy Branch