



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, CNR, MNR, MNSD, MNDC, FF

Introduction:

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent; a monetary Order for unpaid rent and utilities; a monetary Order for money owed or compensation for damage or loss; to retain all or part of the security deposit; and to recover the fee for filing an Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent; for a monetary Order for money owed or compensation for damage or loss; and to recover the fee for filing an Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

During the hearing the Tenant stated that the keys to the rental unit have not yet been returned; that the Tenant had removed all of the property they wished to remove from the rental unit by August 29, 2013; that they have no intention of returning to the rental unit; that they did leave some property at the rental unit but have made arrangements for someone to pick it up and dispose of it; and that anything left at the rental unit can be placed in the carport where it will be picked up by the person who is disposing of their property. On the basis of this declaration, I find that the Tenant has vacated the

rental unit; that the Tenant has abandoned the application to set aside the Notice to End Tenancy; and that the Landlord now has legal possession of the rental unit. On this basis I find that it is no longer necessary to consider the Tenant's application to set aside the Notice to End Tenancy or the Landlord's application for an Order of Possession.

The Tenant was advised that the application for compensation for money owed or compensation for damage or loss was being refused, pursuant to section 59(5)(a) of the *Residential Tenancy Act (Act)*, because the Application for Dispute Resolution did not provide sufficient particulars of the claim for compensation, as is required by section 59(2)(b) of the *Act*.

Although the Tenant did outline several deficiencies with the rental unit in documents submitted with the Application for Dispute Resolution, the documents do not clearly explain why the Tenant is seeking \$700.00 in compensation. At the hearing the Tenant explained that the claim related to heating oil and the Agent for the Landlord stated that the Landlord believed it had something to do with yard maintenance. The Agent for the Landlord stated that she did not understand that the Tenant's claim related to heating oil and she stated that the Landlord is not prepared to proceed with that claim at these proceedings.

I find that proceeding with the Tenant's claim at this hearing would be prejudicial to the Landlord, as the absence of particulars makes it difficult, if not impossible, for the Tenant to adequately prepare a response to the claim. The Tenant retains the right to file another Application for Dispute Resolution in which the Tenant claims compensation for oil costs.

Issue(s) to be Decided:

Is the Landlord entitled to compensation for unpaid rent/lost revenue and should the security deposit be retained by the Landlord or returned to the Tenant?

Background and Evidence:

The Landlord and the Tenant agree that this tenancy began on September 01, 2012; that the tenancy agreement required the Tenant to pay monthly rent of \$2,000.00 by the first day of each month; that the Tenant paid a security deposit of \$1,000.00; and that the Tenant only paid \$500.00 in rent for August of 2013.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of August 12, 2013, was posted on the door of the rental unit on August 02, 2013. The Tenant stated that the Notice was received on August 05, 2013; that the Notice was dispute don August 07, 2013; and that the Tenant moved out of the rental unit on August 29, 2013.

The Landlord is seeking compensation for lost revenue for the month of September as she did not know the rental unit was vacated until today and she has not been able to rent the unit.

The Agent for the Landlord stated that the Landlord agreed to reduce the rent by \$200.00 per month and to provide the Tenant with \$500.00 in heating fuel in exchange for the Tenant painting the interior of the rental unit. The Tenant initially denied entering into this agreement but upon reviewing a written document about this agreement, which all the Tenants had signed, she agreed that the parties had entered into that agreement.

The Landlord and the Tenant agree that the interior of the rental unit was not fully painted. The Landlord is seeking to recover \$2,400.00 in rent and \$500.00 in oil costs due to the fact the work was not completed.

The Landlord and the Tenant agree that the Tenant was obligated to pay the water bill for this rental unit. The Landlord submitted a water bill, in the amount of \$460.76, which is dated August 29, 2013. The bill names one of the Tenant's as the payee. The Tenant stated that the bill was paid this morning.

Analysis

Based on the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$2,000.00 by the first day of each month and that the Tenant only paid \$500.00 of the rent that was due on August 01, 2013. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,500.00 in outstanding rent for August of 2013.

I find that the Tenant fundamentally breached the tenancy agreement when the Tenant did not pay rent when it was due and that the Landlord had grounds to end this tenancy pursuant to section 46 of the *Act*. I find that the Tenant's decision to dispute the Notice to End Tenancy; the Tenant's decision to remain in the rental unit until August 29, 2013; and the Tenant's failure to return the keys to the rental unit when the unit was vacated significantly interfered with the Landlord's ability to find new tenants for September 01, 2013. I therefore find that the Tenant must compensate the Landlord for the loss of revenue she will likely experience between September 01, 2013 and September 15, 2013, which is \$1,000.00.

I decline to award compensation for any period after September 15, 2013, as it is possible, with due diligence, that the Landlord will be able to find new tenants for that period.

I find that the agreement to paint the rental unit is an employment contract that I do not have authority to enforce under the *Act*. Although the payment for this labour was to be paid, in part, by reducing the rent, I simply do not have the authority to determine whether or not the Tenant complied with the terms of the employment contract. I

therefore dismiss the Landlord's claim to recover these costs. The Landlord retains the right to pursue this claim in a court of competent jurisdiction.

As the water bill submitted in evidence is not due until September 28, 2013, I find this claim is premature. In the event this bill remains unpaid and the Landlord is required to pay this charge to the municipality on behalf of the Tenant, the Landlord retains the right to file another Application for Dispute resolution claiming compensation for this expense.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$2,550.00, which is comprised of \$2,500.00 in unpaid rent/lost revenue and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain the Tenant's security deposit of \$1,000.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,550.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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: September 12, 2013

Residential Tenancy Branch

