



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF, MT, CNR, OLC, LRE

Introduction

There are applications filed by both parties. The Landlord seeks an order of possession and a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee. The Tenants have also made a request for more time to be allowed to make an application to cancel a notice to end tenancy and if allowed to cancel a notice to end tenancy issued for unpaid rent, an order for the Landlord to comply with the Act, regulation or tenancy agreement and to suspend or set conditions on the Landlord's right to enter the rental unit.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing and the submitted documentary evidence, I am satisfied that both parties have been properly served.

At 10:42am, both I and the Landlord, P.J. were unable to communicate with the Tenant, J.P. during the hearing. After repeated attempts to communicate with the Tenant, I instructed the Landlord to stay on hold and I addressed the conference call stating that no communication was possible with the Tenant. I instructed the Tenant to hang up and call back into the hearing. After waiting 3 minutes, I determined that the Tenant was still on the call, but did not comply with my request to hang up and call back into the hearing. I repeated the process of again. Both the Landlord and I were still unable to communicate with the Tenant. At 10:46 am, the hearing proceeded. At 10:52 am the Tenant disconnected from the call.

During the hearing, both parties confirmed that the name, B.P. on both the 10 day notice to end tenancy for unpaid rent and the Landlord's Application for dispute resolution were for the same person named as the Tenant, R.S.M, the Tenant, J.P.'s partner and co-tenant. As such, the Landlord's application shall be amended to reflect both names.

The Tenant, J.P. also clarified that her request for more time to be allowed to make an application for dispute resolution was because they were having problems paying the rent and that there were no impediments preventing them from making an application. Residential Tenancy Policy Guideline #36 speaks to extending a time period. An Arbitrator may extend or modify a time limit established by the Residential Tenancy Act only in exceptional circumstances. An Arbitrator may not extend the time limit to apply for dispute resolution beyond the effective date of a notice to end tenancy and may not extend the time within rent must be paid without the consent of the Landlord.

“Exceptional” means that an ordinary reason for a party not having complied with a particular time limit will not allow an Arbitrator to extend that time limit. As such, the Tenant’s application for more time is dismissed. The merits of the Tenant’s claims to cancel a notice to end tenancy issued for cause and to cancel a notice to end tenancy issued for unpaid rent or utilities were not considered. As the Tenant has failed to pay rent or file an application for dispute resolution to dispute the notice, the Tenant is deemed to have accepted that the Tenancy is at an end. The Landlord is granted an order of possession. The Landlord must serve the Tenant 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.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Is the Tenant entitled to an order for the Landlord to comply with Act, Regulation or Tenancy Agreement?

Is the Tenant entitled to an order to control the Landlord’s right to enter?

Background and Evidence

The Landlord states that a 10 day notice to end tenancy issued for unpaid rent dated August 8, 2013 was posted to the rental unit door on August 8, 2013. The Tenant confirms that she received the notice on August 10, 2013. The notice states that rent of \$1,050.00 was due on August 1, 2013 and that as of the date of this hearing, the Tenants both still occupy the rental unit and have not paid any rent. The notice states an effective vacancy date of August 19, 2013. The Tenant stated that she and her partner were experiencing financial problems and were unable to pay the rent.

Both parties confirmed in their direct testimony that the Landlord on one occasion entered the rental unit without providing 24 hours notice or with the permission of the Tenant to post a copy of the 10 day notice to end tenancy for unpaid rent on the fridge.

The Landlord stated that he was not aware that notice was required and has since then not repeated any entry into the rental unit.

Analysis

I accept the undisputed testimony of both parties and find that the Landlord has established a claim for a monetary order for unpaid rent of August and September of 2013. Further as both parties have confirmed that as of the date of this hearing, the Tenants still occupy the rental unit and have not paid any rent for October 2013 as well, I find that the Landlord is entitled to a monetary claim of \$3,150.00 for 3 months of unpaid rent (August, September and October).

As for the Tenant's request for an order to comply and to suspend or set conditions on the Landlord's right to enter, I find that the Tenant has established grounds that the Landlord did not comply with the Act by providing at least 24 hours notice to enter. However, as both parties have confirmed that this occurred on only one occasion and has not repeated, the Landlord was cautioned to comply with Section 29 of the Act.

The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$525.00 security deposit in partial satisfaction of the claim and I grant a monetary order under section 67 for the balance due of \$2,675.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant's Application for more time is denied.

The Landlord is granted an order of possession and a monetary order for \$2,675.00.

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: October 04, 2013

Residential Tenancy Branch

