



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant's application: MT; CNR

Landlord's application: OPR; OPB; MNR; FF; O

Introduction

This Hearing was convened to consider cross applications. The Tenant seeks more time to file an application to cancel a 10 day Notice to End Tenancy for Unpaid Rent; and to cancel the Notice to End Tenancy for Unpaid Rent.

The Landlord seeks an Order of Possession; a Monetary Order for unpaid rent and loss of revenue; and to recover the cost of the filing fee from the Tenant.

Both parties gave affirmed testimony at the Hearing.

Preliminary Matters

The Tenant has applied for an extension of time to file her application to cancel the Notice to End Tenancy.

The Tenant testified that she received the Notice to End Tenancy (the "Notice") on October 7, 2013.

Section 46 of the Act requires a tenant to file an application disputing a 10 day Notice to End Tenancy within 5 days of being served with the Notice. In this case, the Tenant filed her application 13 days after being served with the Notice.

The Tenant testified that she did not file her application to cancel the Notice earlier because she was not sure what to do. She said she told the Landlord "last night" that she would pay the total amount that she owes, but the Landlord told her that she would not let her stay in the rental unit.

Section 66(1) of the Act provides that I may extend a time limit established by the Act **only in exceptional circumstances**. An example of an exceptional circumstance would be that the applicant was in hospital. In this case the Tenant stated that she did

not know the applicable law, which I do not find to be an exceptional circumstance. Page 2 of the Notice provides instructions on disputing the Notice and contact information if a tenant has questions regarding the Notice.

For the reasons provided above, I dismiss the Tenant's application for an extension of time and the Tenant's application to cancel the notice will not be heard.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession and Monetary Order for unpaid rent and loss of revenue?

Background and Evidence

This tenancy started on July 1, 2013. Monthly rent is \$800.00, due on the first day of each month. The Tenant paid a security deposit on June 21, 2013, in the amount of \$400.00.

The Tenant testified that she did not pay the rent because she was having financial troubles, but that she had the money now. She agreed that she has not paid rent for September, October or November, 2013.

The Landlord stated that she was not prepared to reinstate the tenancy and asked that she be allowed to apply the security deposit towards her monetary award.

Analysis

Section 26 of the Act requires a tenant to pay rent when it is due unless the tenant has a right under the Act to deduct all or a portion of the rent. In this case, the Tenant did not have a right under the Act to withhold the rent.

Further to the provisions of Section 46(5) of the Act, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on October 17, 2013, and that she is overholding. I find that the Landlord is entitled to an Order of Possession and a monetary award for unpaid rent for the months of September and October, 2013, and for loss of revenue for the month of November, 2013, in the total amount of \$2,400.00.

Further to the provisions of Section 72 of the Act, I order that the Landlord may apply the security deposit in partial satisfaction of her monetary award.

The Landlord has been successful in her application and I find that she is entitled to recover the cost of the filing fee from the Tenant.

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

Unpaid rent for September and October, 2013	\$1,600.00
Loss of revenue for November, 2013	\$800.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$2,450.00
Less set off of security deposit	<u>-\$400.00</u>
Balance due to the Landlord	\$2,050.00

Conclusion

I hereby provide the Landlord 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 Landlord with a Monetary Order in the amount of **\$2,050.00** for service upon the Tenant. This Order may be filed in the Provincial Court 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: November 27, 2013

Residential Tenancy Branch

