Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   OPC. OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order of Possession - Section 5;
2. A Monetary Order for unpaid rent – Section 67;
3. A Monetary Order for compensation – Section 67;
4. An Order to retain the security deposit – Section 38; and
5. An Order to recover the filing fee – Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

A written tenancy agreement was entered into indicating that the tenancy began in February 2012, that rent of $1,000.00 is payable in advance on the first day of each month and that at the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of $500.00. The tenancy agreement was not provided as

evidence however the Tenant did not dispute the terms. On October 2, 2011, the Landlord served the Tenant personally with a 1 Month Notice to End Tenancy for Cause (the "Notice"). The Notice has an effective date of November 2, 2013 and the reason for the issuance of the Notice is repeated late payment of rent. The Tenant has not made an application to dispute the Notice, has not moved out of the unit and agrees that the Tenant was late paying rent for February, June, September and October 2013. The Landlord also served the Tenant with a 10 day notice to end tenancy for unpaid rent on October 7, 2013. The Landlord states that all rents owing have been paid except for $350.00 for December 2013. The Tenant does not dispute that November 2013 rent was also paid late and that $350.00 is owed for December 2013 rent.

Analysis

Section 53 of the Act provides that where a landlord gives notice to end a tenancy effective on an incorrect date, the notice is deemed to be changed to the earliest date that complies with the Act. Given the date that the Landlord gave the Tenant the Notice, the effective date of the Notice is automatically adjusted to November 30, 2013.

Section 47 of the Act requires that upon receipt of a Notice to end Tenancy for Cause, the tenant may, within ten days of receiving the notice, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not dispute the Notice, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must vacate the unit by that date. Based on the Parties undisputed evidence of late rent payments, remaining unpaid rent and considering that the Tenant has not disputed the Notice, I find that the Notice is valid and that the Landlord is entitled to an Order of Possession. I also find that the Landlord is entitled to **$350.00** in unpaid rent and to recovery of the $**50.00** filing fee for a total monetary entitlement of **$400.00**. As the Landlord still holds the security deposit, I order the Landlord to retain this amount from the security deposit.

.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **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.

I Order the Landlord to retain the amount of $400.00 from the security deposit plus interest of $500.00 in full satisfaction of the claim.

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: December 10, 2013

_____
Residential Tenancy Branch