



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, CNR, MT, MNR, MNSD, O

Introduction:

This hearing was convened in response to cross applications.

On November 07, 2013 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, a monetary Order for unpaid rent and utilities, to retain all or part of the security deposit, and for "other".

On October 28, 2013 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent and for more time to file the application to set aside the Notice to End Tenancy.

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.

The Landlord submitted documents to the Residential Tenancy Branch and a USB stick, 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 Landlord submitted a cassette tape to the Residential Tenancy Branch, a copy of which was not served to the Tenant. As the cassette tape was not served to the Tenant, it was not accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch, copies of which were not served to the Landlord. As the documents were not served to the Landlord, they were not accepted as evidence for these proceedings.

Issue(s) to be Decided:

Is the Landlord entitled to an Order of Possession or should the Notice to End Tenancy be set aside; should the Tenant be granted more time to apply to set aside the Notice to

End Tenancy; is the Landlord entitled to a monetary Order for unpaid rent and utilities; and is the Landlord entitled to keep all or part of the security deposit?

Background and Evidence:

The Landlord and the Tenant agree that this tenancy began on August 01, 2013 and that the Tenant agreed to pay monthly rent of \$900.00 per month, with the exception of August when she was only required to pay \$800.00. The Landlord stated that the tenancy agreement stipulates that the rent is due by the first day of each month or by the "1st weekend as per landlord's call". The Tenant stated that she believed the rent was due by the first day of each month.

The Landlord stated that the tenancy agreement required the Tenant to pay a security and pet damage deposit of \$900.00. A copy of that agreement was submitted in evidence.

The Tenant stated that on July 17, 2013 she signed two different tenancy agreements, one of which was retained by the Landlord and one of which was given to the Tenant. She stated that the tenancy agreement she signed, which has not been accepted as evidence, indicated that the Tenant was required to pay a security deposit of \$450.00. She stated that on her copy of the agreement the \$900.00 deposit that appears on the Landlord's copy has been crossed out, that \$450.00 has been written beside it, and that the change has not been initialed by either party.

The Landlord stated that she does not recall two tenancy agreements being signed on July 17, 2013, although she believes it is possible. She stated that she is certain that she did not alter the amount of the security/pet damage deposit that was due on either document.

The Landlord and the Tenant agree that only the following payments have been made in relation to this tenancy:

- August 03, 2013 - \$500.00
- September 14, 2013 - \$160.00
- September 29, 2013 - \$300.00
- October 1, 2013 - \$1,055.00
- October 05, 2013 - \$50.00
- October 08, 2013 - \$300.00.

The Tenant stated that she has been unable to pay her rent for November and December as the Provincial Government has suspended her funding as a result of these proceedings.

The Landlord and the Tenant agree that a Ten Day Notice to End Tenancy for Unpaid Rent was personally served to the Tenant on October 20, 2013. The parties agree that

the Notice to End Tenancy declared that the Tenant must vacate the rental unit by October 29, 2013. The Tenant stated that she did not dispute this Notice until October 28, 2013 because she miscalculated the timeline for disputing the Notice.

The Tenant stated that on October 21, 2013 she sent the Landlord an email in which she offered to pay the outstanding rent by October 25, 2013; that the Landlord did not come to the rental unit to pick up the outstanding rent; and that she did not make arrangements for the Landlord to pick up the rent at any specific time on October 25, 2013. The Landlord stated that the Tenant did send her an email on October 21, 2013, but it did not include an offer to pay the rent and that the Tenant did not offer to pay the rent after October 20, 2013.

The Landlord and the Tenant agree that the Tenant agreed to pay 50% of the gas and hydro bill for the residential complex. The Landlord submitted copies of a hydro bill, in the amount of \$213.23, a gas bill, in the amount of \$65.55, and a gas bill in the amount of \$106.85. The Landlord stated that copies of these bills were provided to the Tenant electronically in November of 2013. The Tenant stated that she did not receive copies of the bills until November 09, 2013 or November 10, 2013, when she received evidence for these proceedings. The parties agree that the Tenant has not paid her portion of these bills.

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 \$800.00 for August and \$900.00 per month thereafter.

I find that the rent was due by the first day of each month. In reaching this conclusion I was influenced by the Tenant's evidence that she understood the rent was due by the first day of each month, which is somewhat consistent with the tenancy agreement submitted in evidence by the Landlord. I note that the tenancy agreement is unclear in regards to the day the rent is due, as it specifies that rent is due by the first day of each month or by the "1st weekend as per landlord's call". As the tenancy agreement is unclear regarding the due date of the rent, any due date which is not consistent with the Tenant's understanding is, in my view, unenforceable.

I find the tenancy agreement that was submitted in evidence to be the most reliable evidence in regards to the amount to deposits that was due, as it represents a written record of the agreement made by the parties. On the basis of this tenancy agreement, I find that the Tenant agreed to pay a security deposit/pet damage deposit of \$900.00.

I must place less weight on the tenancy agreement that the Tenant stated she has in her possession, as it is not before me as evidence. Even if I were to accept the Tenant's testimony that she has a tenancy agreement on which the \$900.00 security/pet damage deposit has been crossed out and \$450.00 has been written beside the amendment, I would place limited weight on that document. In reaching this conclusion

I was influenced by the Landlord's testimony that she did not agree to that change and by the Tenant's testimony that the amendment is not initialed by either party. In the absence of initials which shows the Landlord agreed to the amendment, I am not satisfied that the amendment was made with the consent of the Landlord.

On the basis of the undisputed evidence, I find that the Tenant has only paid \$2,365.00 to the Landlord in relation to this tenancy and that she was required to pay \$2,600.00 in rent for the period between August 01, 2013 and October 31, 2013. Assuming all of these payments were applied to rent, I find that the Tenant still owes \$235.00 in rent for the period ending October 31, 2013 and that the Tenant has not paid the security deposit for the rental unit. As the Tenant is obligated to pay rent when it is due, I find that she must pay the Landlord \$235.00 in outstanding rent.

As the Tenant has not paid a security or pet damage deposit, I dismiss the Landlord's claim to retain a deposit.

On the basis of the undisputed evidence, I find that Tenant was served with a Notice to End Tenancy on October 20, 2013, which declared that she must vacate the rental unit by October 30, 2013. Section 46(5) of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I find that the Landlord is entitled to an Order of Possession.

Section 66(1) of the *Act* authorizes me to extend the time limit for setting aside a Notice to End Tenancy only in exceptional circumstances. The word "exceptional" means that I am unable to extend this time limit for ordinary reasons. The word "exceptional" implies that the reason for failing to meet the legislated time lines is very strong and compelling. A typical example of an exceptional reason for not complying with the timelines established by legislation would be that the Tenant was hospitalized for an extended period after receiving the Notice.

I find that the Tenant's failure to properly calculate the timeline for filing an application to set aside a Notice to End Tenancy is not an exceptional reason for failing to meet the legislated timeline. I therefore dismiss the Tenant's application for more time to apply to set aside the Notice to End Tenancy.

In determining this matter I have placed little weight on the Tenant's testimony that she offered to pay the outstanding rent after she received the Notice to End Tenancy on October 20, 2013. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates this testimony or that refutes the Landlord's testimony that the offer was not made. I specifically note that the email in which the payment offer was allegedly made has not been accepted as evidence.

As the Tenant did not vacate the rental unit by October 31, 2013, I find that she is obligated to pay rent, on a per diem basis, for the days she remained in possession of the rental unit. As she remained in the rental unit for the entire month of November, I find that she must pay \$900.00 in rent for November. As she is still in possession of the rental unit, I find that she must also pay the Landlord for the ten days in December that she has remained in possession of the rental unit, at a daily rate of \$29.03, which equates to \$290.30.

I am unable to order the Tenant to pay rent for any period after December 10, 2013, as it is entirely possible that the Tenant will vacate the rental unit prior to December 11, 2013. The Landlord retains the right to file another Application for Dispute Resolution for unpaid rent for any period after December 10, 2013.

On the basis of the undisputed evidence, I find that the Tenant agreed to pay 50% of the gas and hydro costs incurred at the residential complex during her tenancy and that she has not paid her portion of the hydro and gas bills that are the subject of this dispute, which total \$385.63. I therefore find that she must pay the Landlord 50% of these costs, which is \$192.82.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$1,618.12, which is comprised of \$1,425.30 in unpaid rent and \$192.82 in unpaid utilities. Based on these determinations I grant the Landlord a monetary Order for \$1,618.12. 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: December 11, 2013

Residential Tenancy Branch

