



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNSD, MNR, MNDC FF
For the tenant: CNR, CNC

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for money owed or compensation for damage or loss and unpaid rent, for authority to retain the tenant’s security deposit, and for recovery of the filing fee.

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) and a 1 Month Notice to End Tenancy for Cause.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue-The tenant stated that she did not receive the landlord’s documentary evidence, after the landlord testified that he delivered the documents in the tenant’s mailbox. I have accepted the landlord’s documentary evidence, which were copies of receipts for rent payments, as I find the landlord provided credible evidence that he served the documents as required by section 88 of the Act and as the documents ultimately did not impact my decision.

Preliminary matter-The tenant applied to cancel a 1 Month Notice, but neither she nor the landlord provided a copy of such Notice in with their written submissions. In response to my question, the tenant confirmed that her application dealt with the matter of the 10 Day Notice.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and to recover the filing fee?

Is the tenant entitled to an order cancelling the Notice?

Background and Evidence

The undisputed evidence was that this tenancy began on March 1, 2012, monthly rent is \$800 payable on the first day of the month, and the tenant paid a security deposit of \$400 at the beginning of the tenancy.

The undisputed evidence also was that this landlord was not the original landlord, as he purchased the property, a 4-plex, from the original landlord/owner in June 2013.

Pursuant to the Rules of Procedure, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

The landlord stated that he served the tenant with a 10 Day Notices to End Tenancy for Unpaid Rent on November 4, 2013, by leaving it with the tenant, listing unpaid rent of \$810 as of November 1, 2013. The effective move-out date listed was November 14, 2013.

The landlord asserted that since the issuance of the Notice, the tenant made a payment of \$800 on December 1, 2013, and owes the amount of \$1610 in total unpaid rent through the date of the hearing, including January 2013.

The landlord submitted that when he received the rent payment of \$800 on December 1, 2013, he wrote the tenant a receipt, showing that the acceptance was for use and occupancy only.

The landlord further submitted that the tenant is given a receipt for each payment of rent and that the rent is habitually paid late and in partial payments, as shown by his receipts.

In response, the tenant claimed that she did pay rent for November early, in late October, but confirmed that she withheld a small amount in compensation for the landlord throwing away some of her personal property.

The tenant, when questioned, confirmed that she did not receive a receipt for her rent payment in late October, nor could the tenant provide any other evidence that she paid the rent payment for November early.

The tenant said that as to the January 2014, rent payment, the landlord did not come by the rental unit on January 1 as to collect the rent, as is his custom.

In response to my question, the landlord confirmed that he did not go to the rental unit on January 1 to collect the rent, as he so does customarily.

Analysis

Landlord's Application:

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent, pursuant to section 46 of the Act. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenant disputed the Notice within business five days; however when a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

In the case before me, I find the landlord submitted sufficient evidence that the tenant owed the landlord rent when the Notice was issued and that she did not pay all or any of the rent owed to the landlord within five days of receiving the Notice as the tenant failed to convince me she paid rent for November 2013.

Therefore, I find the tenancy has ended due to the tenant's failure to pay rent and the landlord is entitled to regain possession of the rental unit.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective 2 days after service upon the tenant.

I find the landlord submitted sufficient evidence that the tenant owes the amount of \$810 for unpaid rent through December 2013.

I therefore find that the landlord is entitled to a monetary award in the amount of \$860, comprised of outstanding rent of \$810 through December, 2013, and the \$50 filing fee paid by the landlord for this application.

I have not granted the landlord a monetary award for unpaid rent for January 2014, due to the landlord's confirmation that he did not attend the rental unit on January to collect the rent as was his custom, he may still go by the rental unit to collect the monthly rent, and for the reason that the tenancy may end prior to the end of January, meaning the landlord may receive rent from a subsequent tenant, due to the hearing early in the month.

The tenant is advised that the landlord is still entitled to receive rent for the month of January from the tenant under the terms of the tenancy agreement and if he is unsuccessful in collecting rent for the month of January 2014, the landlord is granted leave to reapply for a monetary award for the rent for January 2014.

Tenant's application:

Due to the above, the tenant's application for dispute resolution seeking a cancellation of the Notice is dismissed without leave to reapply as I find the Notice to End Tenancy issued is valid and enforceable.

Conclusion

The landlord's application has been partially successful.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon her, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

As the landlord's request, I allow him to retain the tenant's security deposit of \$400 in partial satisfaction of his monetary award of \$860, and I grant the landlord a final, legally binding monetary order for the balance due pursuant to section 67 of the Act for the amount of \$460, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after the order has been served upon her, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

The tenant's application is dismissed, without leave to reapply.

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: January 03, 2014

Residential Tenancy Branch

