



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 43 Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: CNR, MT
For the landlord: MNSD, OPR, MNR, FF

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 tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) and for an order granting more time to make an application to cancel a notice to end tenancy.

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

At the beginning of the hearing, neither party raised any issue regarding the service of the other’s application or evidence. I must note, however, that I did not have the landlord’s evidence before me at this hearing. The landlord was informed that it was my belief the hearing could be conducted on the merits of their application through their oral evidence and without their documentary evidence, with the understanding that if this was not the case, I would not issue a Decision without having obtained the same.

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, respond to the other’s evidence, 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 matter-I did obtain the tenant’s testimony regarding her request for additional time within which to dispute the landlord’s Notice, with her reply that she was informed by someone at the Residential Tenancy Branch (“RTB”) that she should wait until the last possible day to file her application. The tenant said that when she returned

on the last day, the wait time was too long, but was informed by personnel that all she had to do was ask for additional time and there would be no problem.

While I do not accept the tenant's version of these events, I made the decision to proceed on the merits of her application out of an abundance of caution.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

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?

Background and Evidence

The undisputed evidence of the parties is that this tenancy began on September 1, 2008 and that the monthly rent noted in the tenancy agreement was \$388. The landlord submitted that the tenant's monthly rent was formerly income based; however the tenant was no longer receiving a rent subsidy.

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

Landlord's application-

The landlord stated that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent on April 11, 2014, by attaching it to the tenants' door, listing unpaid rent of \$2968 through May 1, 2014. The effective move-out date listed on the Notice was April 30, 2014. The tenant acknowledged receiving the Notice on April 11, 2014

The landlord asserted that since the issuance of the Notice, no rent payments have been received from or on behalf of the tenant and that through the date of the hearing, the tenant owed \$4132 in total unpaid rent, which included a claim for bank fees of \$40 for May and June, each.

Tenant's response-

The tenant agreed that she had not paid rent since February, as claimed by the landlord, but she disputed that she owed the landlord that much in unpaid rent.

The tenant submitted that she had not been employed since October 2013, and has not received any benefits since February 2014.

The tenant claimed to have given the landlord her rent subsidy forms. The tenant also claimed that she had substantially vacated the rental unit.

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 accepted that the tenant disputed the Notice within the required time frame; 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, detailed oral evidence that the tenant owed the landlord the rent listed when the Notice was issued and that the tenant did not pay all or any of the rent owed to the landlord within five days of receiving the Notice. I also find the tenant submitted insufficient evidence to support her claim that she did not owe the amount listed.

Therefore, I find the tenancy has ended due to the tenant's failure to pay monthly 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.

As to the landlord's monetary claim, I find the landlord submitted sufficient evidence that the tenant owes the amount of \$3744 for unpaid rent through May 2014. I also allow the landlord to recover the amount of \$25 for bank fees, which is the maximum allowable amount a landlord may recover pursuant to section 7 of the Residential Tenancy Regulation.

I therefore find that the landlord is entitled to a monetary award in the amount of \$3819, comprised of a rent deficiency of \$3744 through May 2014, a bank fee of \$25 for May 2014, and the \$50 filing fee paid by the landlord for this application.

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 10 Day Notice to End Tenancy issued by the landlord has been supported by the landlord and is therefore valid and enforceable.

Conclusion

The landlord's application has been granted.

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.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$3819, 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 landlord may deduct any security deposit they hold from the tenant prior to seeking any enforcement of the monetary order, if required, with a corresponding reduction in the amount awarded.

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: June 12, 2014

Residential Tenancy Branch

