



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, MNDC, RR, FF
OPR

Introduction

This hearing concerns the tenant's application for cancellation of a notice to end tenancy for unpaid rent / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / permission to reduce rent for repairs, services or facilities agreed upon but not provided / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

During the hearing the landlord requested an order of possession in the event the tenant's application does not succeed.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the fixed term of tenancy is from August 01, 2013 to August 01, 2014. Monthly rent of \$1,250.00 is due and payable in advance on the first day of each month, and a security deposit of \$625.00 was collected. Pursuant to the tenancy agreement there are no utilities included in the rent.

The tenant claims she was informed by the landlord that the cost of hydro for 1 month would be approximately \$70.00. However, the tenant claims that her hydro costs have exceeded that, and she seeks compensation from the landlord as a result. The tenant's application for dispute resolution in relation to the foregoing was filed on May 05, 2014.

Thereafter, arising from rent of \$1,250.00 which remained unpaid when due on June 01, 2014, the landlord issued a 10 day notice to end tenancy for unpaid rent dated June 02, 2014. The notice was served by way of posting on the unit door on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is June 12, 2014. Following this, the tenant filed an

amended application on June 13, 2014. In her amended application she seeks cancellation of the 10 day notice, and reimbursement of a \$45.00 NSF fee assessed by the bank, arising from the landlord's attempt to cash the tenant's rent cheque for June 2014. June's rent was later deposited into the landlord's account on June 13, 2014.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute, and undertook to achieve at least a partial resolution.

Analysis

Section 63 of the Act speaks to the **Opportunity to settle dispute**, and provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion led to a partial resolution and it was specifically agreed as follows:

RECORD OF SETTLEMENT

- that the landlord will reimburse the tenant for costs arising from hydro in the total amount of **\$350.00**.

As to the first of 2 remaining matters in dispute, based on the documentary evidence and testimony, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated June 02, 2014. As the notice was served by way of posting on the unit door on that same date, pursuant to section 90 of the Act which speaks to **When documents are considered to have been received**, I find that the notice was received 3 days later on June 05, 2014. The tenant did not pay the overdue rent within 5 days of receiving the notice, and did not apply to dispute it; the fifth day would be June 10 and it was not until June 13, 2014 when the tenant paid the rent and filed her application to dispute the notice. The tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice.

Section 55 of the Act addresses **Order of Possession for the landlord**, in part:

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

Following from all of the above, the tenant's application for cancellation of the 10 day notice is hereby dismissed, and I find that the landlord has established entitlement to an **order of possession**.

The final matter in dispute concerns the tenant's application to recover the \$45.00 NSF fee. As earlier noted, the tenancy agreement provides that rent is due and payable in advance on the first day of each month. I find that the landlord ought not to bear responsibility for the NSF fee as a result of the tenant's failure to have sufficient funds available in her account on the date when rent is due and payable. Accordingly, this aspect of the tenant's application is hereby dismissed.

As the tenant has achieved partial success with her application, I find that she has established entitlement to recovery of half the filing fee in the amount of **\$25.00**.

Finally, the attention of the parties is drawn to the following sections of the Act:

Section 37: **Leaving the rental unit at the end of a tenancy**

Section 38: **Return of security deposit and pet damage deposit**

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **June 30, 2014**. This order must be served on the tenant. 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.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant for **\$375.00** (\$350.00 + \$25.00). This order may be served on the landlord, filed in the 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: June 23, 2014

Residential Tenancy Branch

