



Dispute Resolution Services

Residential Tenancy Branch

Office of Housing and Construction Standards

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Decision

Dispute Codes:

MNR, OPR, FF, CNR , MNDC, MNSD,

Introduction

This hearing dealt with an Application by the landlord for an Order of Possession based on a 1-Month Notice to End Tenancy for Cause dated May 30, 2014 and compensation for rent or loss of rent and reimbursement for the cost of movies ordered by the tenant.

The hearing was also convened to deal with an application by the tenant seeking to cancel the One-Month Notice to End Tenancy for Cause.

Both parties were present. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties had an opportunity to submit documentary evidence prior to the hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and make submissions. I have considered all of the relevant evidence that was properly served.

Preliminary Matters:

Order of Possession

Although the landlord's application indicated that they were seeking an Order of Possession, and the tenant's application indicated that they were seeking to cancel the One Month Notice to End Tenancy for Cause, the parties stated that the tenant vacated the unit on July 8, 2014, after the landlord had already made their application.

Therefore landlord's request for an order of possession to end the tenancy and the tenant's application seeking to cancel the One Month Notice to End Tenancy for Cause, are now moot issues and need not be considered.

However, the landlord still seeks a monetary order for rent and loss of revenue and the hearing will proceed on that matter

Landlord's Request for Return of Evidence Served on the Tenant

The landlord has made a request that I issue an order under the Act requiring the tenant to return all evidence back to the landlord that had been served by the landlord on the tenant for the purpose of this hearing.

The request is declined. I find that there is no authority under the Act for me to make such an order against the other party to compel them to return documents already served on them by the applicant.

Remaining Issue to be Decided

Is the landlord entitled to monetary compensation under section 67 of the Act for rent and damages?

Background and Evidence

Submitted into evidence was a copy of the One Month Notice to End Tenancy for Cause dated May 30, 2014 with effective date of June 30, 2014 and a copy of a 10-Day Notice to End Tenancy issued on July 3, 2014 demanding rent for July in the amount of \$1,200.00. A copy of the tenancy agreement, copies of communications and written statements were placed in evidence.

The rent was \$1,200.00 per month and the tenant paid a security deposit of \$600.00. The landlord testified that the tenant did not vacate on June 30, 2014 as specified in the One Month Notice to End Tenancy for Cause but stated in writing that she would be vacating the rental unit on July 14, 2014.

The landlord testified that when the tenant failed to pay the rent due on July 1, 2014, a 10-Day Notice to End Tenancy for Unpaid Rent was therefore served on the tenant on July 3, 2014 with effective date of July 11, 2014, demanding payment of \$1,200.00 for rent .

The landlord testified that the tenant also owes \$11.95 for movies ordered from the cable account during the tenancy.

The landlord stated that she feels entitled to an additional \$1,200.00 loss of revenue for the month of August 2014. The landlord pointed out that, although the unit was being advertised, it was not possible to re-rent the unit for August 1, 2014 while the tenant remained in possession of the unit until mid month in July.

The tenant did not agree with the landlord's claim and pointed out that, although she disputed the basis of the landlord's One Month Notice to End Tenancy for Cause, she did vacate the unit on July 8, 2014.

Analysis

Based on the testimony of both parties and the evidence submitted, I find that the tenant was served with a One-Month Notice to End Tenancy ending the tenancy effective June 30, 2014, over-holding the property for an additional 8 days beyond the effective date of the Notice.

I find that the landlord is therefore entitled to be compensated for the additional 8 days that the tenant remained in the rental unit beyond the effective date shown on the One-Month Notice to End Tenancy for Cause that was issued by the landlord.

I find that the landlord is entitled to \$315.62 representing payment for 8 days rent at \$39.45 per day because the tenant failed to return possession to the landlord on the effective date shown on the Notice.

In regard to the Landlord's claim for the cost of the movies, I accept, on a balance of probabilities, that the tenant likely did order the movies and that the reimbursement to the landlord is still outstanding. Therefore, I find that the landlord is entitled to further compensation in the amount of \$11.98.

I find that the landlord has established a total monetary claim of \$377.60, comprised of \$315.62 for rent, \$11.98 reimbursement movie rentals and the \$50.00 fee paid by the landlord for this application.

The remainder of the landlord's monetary claim is dismissed without leave.

As the tenant has already moved out, the portion of the tenant's application seeking to cancel the Notice and the portion of the landlord's application seeking an Order of Possession are dismissed without leave as well.

I hereby order that the landlord retain \$377.60 from the tenant's security deposit of \$600.00 in satisfaction of the monetary claim, leaving a refund balance in favour of the tenant in the amount of \$222.40.

I hereby grant the tenant a monetary order for \$222.40 representing the remainder of the tenant's security deposit. This order must be served on the landlord and may be enforced through BC Small Claims Court.

Conclusion

The landlord is partly successful in the application and is granted an order to retain a portion of the tenant's security deposit in satisfaction of funds found to be owed and the remainder of the landlord's monetary claims are dismissed. A monetary order is granted to the tenant for the tenant's remaining security deposit funds still being held in trust by the landlord.

The tenant's application seeking to cancel the One-Month Notice to End Tenancy for Cause and the portion of the landlord's application seeking to enforce the One-Month Notice to End Tenancy for Cause are found to be moot as the tenancy already ended prior to the hearing date..

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: July 21, 2014

Residential Tenancy Branch

