



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coronet Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent and money owed or compensation for damage or loss, for authority to retain the tenant's security deposit, and for recovery of the filing fee paid for this application.

The parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and the tenant confirmed receiving the landlord's application and documentary evidence.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence 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.

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 for recovery of the filing fee paid for this application?

Background and Evidence

The landlord gave undisputed evidence that this tenancy began on January 26, 2011, current monthly rent is \$1106.45, and a security deposit and pet damage deposit of \$500 each were paid by the tenant at the beginning of the tenancy.

The landlord gave undisputed evidence that on May 20, 2014, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by leaving it with

the tenant's son, listing unpaid rent of \$775.90 as of May 1, 2014. The effective vacancy date listed on the Notice was May 30, 2014.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The landlord stated that since the Notice was issued, the tenant made a payment of \$500 in May and \$400 in July, 2014, with a receipt being issued for use and occupancy only.

The landlord's monetary claim was \$2918.86 in unpaid rent and unpaid utilities through the date of their application. The landlord requested that their application be amended to include current unpaid rent and unpaid utilities, or the amount of \$4912.26.

The landlord's relevant documentary evidence included, but was not limited to, a tenant ledger sheet, the written tenancy agreement, and the Notice.

The tenant acknowledged that she has not paid rent or utilities, but attributed this to losing her job, and having no benefits.

Analysis

Based on the oral and written evidence, I find the landlord submitted sufficient evidence to prove that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service and 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.

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

As to the landlord's request for monetary compensation, I find the landlord submitted insufficient evidence and lack of particulars to support their claim. For instance, it appears that the landlord has commingled rent with unpaid utilities on the Notice, although the Notice has a separate section to deal with unpaid utilities. Under section 46(6) of the Act, a landlord may issue to the tenant a notice seeking to end the tenancy if the written tenancy agreement requires a tenant to pay utilities to the landlord and the utilities remain unpaid more than 30 days after written demand from the landlord.

In this case, the written tenancy agreement requires the tenant to pay 50% of the utilities, but does not require that the utilities be paid to the landlord; additionally, the landlord did not submit proof of the cost of utilities for which the tenant would be responsible. I also considered that the landlord's testimony that the tenant paid \$400 in July does not comport with the documentary evidence as this payment was not listed,

and that the amount listed on the Notice was not reflected on the tenant ledger sheet for the month of May

Due to insufficient particulars as to the breakdown of the landlord's monetary claim as between rent and utilities and the inconsistent evidence, I dismiss their monetary claim, with leave to reapply.

As the landlord has had partial success with their application, I grant them recovery of their filing fee paid for this application, \$50. I have not allowed them the cost of \$80 as requested, as section 72(1) of the Act allows only repayment of the fee paid for filing for dispute resolution, and a party may not contract outside of the requirements of the Act.

Conclusion

The landlord's application has been partially 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 being served, the 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.

The portion of the landlord's application seeking monetary compensation for unpaid rent and unpaid utilities is dismissed due to insufficient particulars, with leave to reapply.

The landlord has been granted a monetary award in the amount of \$50, for recovery of the filing fee paid for this application. The landlord is granted a monetary order in that amount, or they may deduct \$50 from the tenant's security deposit to satisfy this monetary award.

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* and is being mailed to both the applicant and the respondent.

Dated: September 15, 2014

Residential Tenancy Branch

