



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, CNR, MNR, MNSD, OLC, FF

Introduction

This hearing was convened in response to cross applications.

On September 19, 2014 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent or Utilities, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on September 30, 2014 the Application for Dispute Resolution, the Notice of Hearing and documents the Tenant wishes to rely upon as evidence were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On September 24, 2014 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent and/or utilities, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on September 26, 2014 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord wishes to rely upon as evidence were sent to each Respondent, via registered mail. The Tenant stated that both she and the other Respondent received these documents and they were accepted as evidence for these proceedings.

The Agent for the Landlord stated that documents were submitted to the Residential Tenancy Branch on November 12, 2014; however these documents were not served to the Tenant. As the documents were not served to the Tenant, they were not accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession or should the Notice to End Tenancy for Unpaid rent be set aside?

Is the Landlord entitled to a monetary Order for unpaid rent and/or utilities, and to keep all or part of the security deposit?

Is there a need to issue an Order requiring the Landlord to comply with the *Act* or tenancy agreement?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 15, 2014 and that rent of \$1,300.00 is due by the first day of each month. The parties agree that no rent was paid for September, October, or November of 2014.

The Agent for the Landlord stated that a security deposit of \$650.00 was paid and the Tenant stated a security deposit of \$660.00 was paid. The tenancy agreement, which was submitted in evidence, indicates a security deposit of \$650.00 is required

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of September 26, 2014, was posted on the door of the rental unit on September 15, 2014. The Tenant stated that this Notice was received on September 15, 2014.

The Landlord and the Tenant agree that the Tenant agreed to pay for utilities during the tenancy, including the water bill. The agreement was that the water bill would be in the Tenant's name and that the Tenant would pay that bill directly. The Agent for the Landlord stated that the bill was never transferred into the Tenant's name.

The Landlord submitted a copy of a water bill for the rental unit, in the amount of \$211.58. The parties agree that a copy of the bill was served to the Tenant on September 15, 2014.

The Tenant stated that she is concerned that this bill may be paid by the strata corporation, although she submitted no evidence of that. The Agent for the Landlord stated that the strata bill is not responsible for paying this water bill. The Tenant also wants confirmation that she is not obligated to pay the water bill until she is provided with a copy of the bill.

The Tenant also questions the "legality" of the \$150.00 late fees. The tenancy agreement stipulates that a "surcharge of up to \$150.00 may be incurred or notice of eviction given for late rent".

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,300.00 by the

first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord when it is due.

On the basis of the undisputed evidence, I find that the Tenant has not paid rent for September of 2014. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,300.00 in outstanding rent for September.

I favour the testimony of the Agent for the Landlord, who stated that a \$350.00 security deposit was paid, over the testimony of the Tenant, who stated that a \$360.00 security deposit was paid. In reaching this conclusion I was heavily influenced by the tenancy agreement, which corroborates the Agent for the Landlord's testimony, and by the absence of evidence that corroborates the Tenant/s testimony.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days, by providing proper written notice. On the basis of the undisputed evidence, I find that the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on September 15, 2014.

As the Tenant did not pay the rent when it was due on September 01, 2014; the Tenant was served with a Ten Day Notice to End Tenancy for Unpaid Rent; and the Tenant has not yet paid the rent for September, I find that the Landlord has grounds to end this tenancy, pursuant to section 46 of the *Act*. I therefore dismiss the Tenant's application to set aside the Notice to End Tenancy that was served and I grant the Landlord's application for an Order of Possession.

As the Tenant did not vacate the rental unit on September 26, 2014, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay rent for the period between September 26, 2014 and September 30, 2014, I find that the Landlord has been fully compensated for that period. I also find that the Tenant must compensate the Landlord for the month of October of 2014, in the amount of \$1,300.00, as the Tenant remained in possession of the rental unit for that month.

I also find that the Tenant must compensate the Landlord for the 12 days in November of 2014 that the Tenant remained in possession of the rental unit for that month, at a daily rate of \$43.33, which equates to \$519.96. I decline to award compensation for the entire month of November, as it is possible that rental unit will be vacated by November 13, 2014.

On the basis of the undisputed evidence, I find that the Tenant agreed to pay the water charges for the rental unit and that the Tenant is obligated to pay water charges incurred during the tenancy, even if the bill is never transferred into the name of the Tenant. I find that the Tenant is not obligated to pay any water bill until she is provided a copy of the bill, as it is reasonable the Tenant should be provided with proof of the amount of the charges. As the Tenant has been provided with a copy of the water bill in the amount of \$211.58, which is still in the name of the Landlord, I find that the Tenant must pay this amount to the Landlord.

Section 7(1)(d) of the *Residential Tenancy Regulation* stipulates that a landlord can charge a fee of not more than \$25.00 for a late rent payment. Section 7(2) of the Regulation stipulates that a landlord can only charge this fee if the tenancy agreement provides for this fee.

The tenancy agreement for this tenancy provides for a \$150.00 late fee, which is not authorized by the *Regulation*. I find that condition of the tenancy agreement regarding late fees does not comply with the legislation and therefore I find that the term requiring the Tenant to pay a late fee is not enforceable. To be enforceable, the tenancy agreement must stipulate that the Tenant agrees to a late payment fee of \$25.00.

I find that the both the Landlord's Application for Dispute Resolution and the Tenant's Application for Dispute Resolution have merit. I therefore find that each party must pay for the cost of filing their own Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$3,331.54, which is comprised of \$3,119.96 for unpaid rent and \$211.58 for utilities. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$650.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,681.54. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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: November 12, 2014

Residential Tenancy Branch

