



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, CNR, MNR, MT, LRE

Introduction

The Landlord initiated a direct request proceeding, which was reconvened as a participatory hearing. This participatory hearing was convened to determine the merit of the Landlord's Application for Dispute Resolution, in which he applied for an Order of Possession for Unpaid Rent and a monetary Order for unpaid rent.

When I initially considered the Landlord's application for an Order of Possession and a monetary Order I was unaware that the Tenant had filed an Application for Dispute Resolution, in which the Tenant applied to set aside the Notice to End Tenancy for Unpaid Rent; for more time to set aside the Notice to End Tenancy; and to suspend or set conditions on the Landlord's right to enter the rental unit. The Tenant's applications will be considered at this hearing.

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.

The Landlord stated that the Notice of Direct Request Proceeding was served to the Tenant by registered mail on September 09, 2014. The Tenant stated that she received these documents by registered mail.

The Landlord and the Tenant agree that my Interim Decision of September 15, 2014, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were served to the Tenant by the Landlord's agent in September of 2014.

The Tenant stated that her amended Application for Dispute Resolution and documents she wishes to rely upon as evidence were served to the Landlord via registered mail, although she cannot recall the date of service. The Landlord stated that he received these documents by registered mail.

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? Should the Tenant be granted more time to apply to set aside the Notice to End Tenancy? Is the Landlord entitled to a monetary Order for unpaid rent? Is there a need to suspend or set conditions on the Landlord's right to enter the rental unit?

Background and Evidence

The Landlord stated that this tenancy began on June 01, 2014 and the Tenant stated that it began on May 27, 2014.

The Landlord submitted two tenancy agreements for the rental unit, one in the name of the Tenant and one in the name of a male with the initials "A.S."

The tenancy agreement in the name of the Tenant indicates rent of \$1,400.00 is due by the first day of each month and that it is for a fixed term that begins on June 01, 2014 and ends on May 31, 2015. The parties agree that the Tenant was provided with a copy of this agreement.

The tenancy agreement in the name of the male with the initials "A.S." indicates rent of \$700.00 is due by the first day of each month and that it is for a fixed term that begins on June 01, 2014 and ends on May 31, 2015. The Landlord stated that a copy of this agreement was provided to the male with the initials "A.S." at the start of the tenancy and the Tenant stated that a copy was never provided to the male with the initials "A.S."

At the hearing the Landlord stated that it was his understanding that rent for the unit was \$1,400.00 per month and that only the Tenant was responsible for paying the rent. The Tenant stated that it was her understanding that she was responsible for paying \$700.00 in rent and the male with the initials "A.S." was responsible for paying \$700.00 in rent.

The Landlord stated that the only reason he created a tenancy agreement for the male with the initials "A.S." is to assist the male in obtaining social assistance.

The Landlord submitted a provincial document which he signed, which indicates that the Tenant's portion of the shared rent is \$700.00.

The Landlord and the Tenant agree that rent of \$700.00 was paid on September 02, 2014 by the male with the initials "A.S.". The Landlord submitted a receipt to show that the male paid rent of \$700.00 for September.

The Tenant stated that she had to leave the city for a family emergency on September 01, 2014 and that she informed her "liason" that she would pay her rent when she returned.

The Landlord stated that on September 02, 2014 a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of September 12, 2014, was personally served to the male with the initials "A.S.". The Tenant stated that the male with the initials "A.S." told her about the Notice to End Tenancy on September 02, 2014 or September 03, 2014. The parties agree that the male with the initials "A.S." is an adult who resides in the rental unit.

The Tenant stated that she did not physically receive the Notice to End Tenancy until she returned to the rental unit on September 09, 2014 and that she filed her Application for Dispute Resolution on September 11, 2014.

The Tenant stated that she vacated the rental unit on November 01, 2014 but that the male with the initials "A.S.", two other adults, and two children are still occupying the rental unit.

The Landlord and the Tenant agree that there is currently a court Order prohibiting the Landlord from entering the rental unit, as a result of criminal allegations.

Analysis

On the basis of the tenancy agreement submitted in evidence, I find that the Landlord entered into a written tenancy agreement with the male with the initials "A.S.", which required him to pay rent of \$700.00. I find that the written agreement corroborates the Tenant's testimony that the male with the initials "A.S." was required to pay rent of \$700.00 and it does not support the Landlord's testimony that the Tenant was solely responsible for paying the rent.

On the basis of the second tenancy agreement submitted in evidence, I find that the Landlord entered into a written tenancy agreement with the Tenant, which declared that she must pay \$1,400.00 in rent.

On the basis of the undisputed testimony, I find that the total monthly rent for the unit is \$1,400.00. As the male with the initials "A.S." has a written agreement that specifies he must pay \$700.00 in rent, it is logical to conclude that the Tenant must only pay the remaining \$700.00 of the \$1,400.00 that is due. This is consistent with the testimony of the Tenant and is consistent with the provincial document that is signed by the Landlord, which indicates that the Tenant's portion of the shared rent is \$700.00.

My decision that the Tenant is required to pay rent of \$700.00 by the first day of each month replaces my previous conclusion that the Tenant is required to pay rent of \$1,400.00 per month, which was outlined in my interim decision. The decision that the Tenant is required to pay \$700.00 in monthly rent is based on information that was not available to me when the interim decision was rendered.

As the Tenant and the male with the initials "A.S." have not rented the property under the same tenancy agreement, I find that they are not co-tenants. This means that they are each individually responsible for meeting the terms of their separate agreement and neither is responsible for the debts of the other party.

In determining that there are two separate tenancy agreements I have placed little weight on the Landlord's testimony that two agreements were created to help the male with the initials "A.S." obtain social assistance. The motivation behind creating two separate agreements is largely irrelevant to the Landlord's decision to create two agreements.

On the basis of the undisputed evidence, I find that the male with the initials "A.S." paid \$700.00 in rent for September and that the Tenant did not pay rent for September. I therefore find that the Tenant owes \$700.00 in rent that was due on September 01, 2014.

If rent is not paid when it is due, section 46(1) of the *Residential Tenancy Act (Act)* a landlords is entitled to end the tenancy within ten days, by providing proper written notice. On the basis of the undisputed evidence, I find that on September 02, 2014 a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was personally served to an adult male who lived with the Tenant on that date. I therefore find that the Tenant was properly served with the Notice to End Tenancy on September 02, 2014, in accordance with section 88(e) of *Act*.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Tenant was out of town and did not physically receive the Notice to End Tenancy until September 09, 2014. Section 46(4) of the *Act* stipulates that a tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. As the Tenant received the Notice on September 09, 2014 and she disputed it on September 11, 2014, I find that she disputed it within the legislated time period. I therefore find there is no reason to consider her application for more time to apply to set aside the Notice to End Tenancy.

As the Tenant did not pay rent when it was due on September 01, 2014 and she did not pay it within five days of receiving the Notice to End Tenancy, I find that the Landlord had the right to end the tenancy in accordance with section 46 of the *Act*. I therefore find that the Tenant's tenancy ended ten days after the Tenant received the Ten Day Notice to End Tenancy and I dismiss her application to set aside the Notice to End Tenancy. As the Tenant's tenancy has ended in accordance with section 46 of the *Act* and the Tenant has vacated the rental unit, she no longer has a legal right to occupy the rental unit.

As the male with the initials "A.S." has a separate tenancy agreement with the Landlord which has not been ended in accordance with section 45 of the *Act*, I am unable to grant the Landlord an Order of Possession for the rental unit. I therefore dismiss the

Landlord's application for an Order of Possession. The Landlord retains the right to serve the male with the initials "A.S." with a Ten Day Notice to End Tenancy if his rent is not paid when it is due.

As the Tenant did not vacate the rental unit on the effective date of the Notice to End Tenancy, 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 full month of September of 2014, the Landlord has been fully compensated for that period.

I also find that the Tenant must pay rent of \$700.00 for the month of October as the Tenant remained in possession of the rental unit for that month.

As the Tenant is only obligated to pay monthly rent of \$700.00, I dismiss the Landlord's claim for \$1,400.00 in rent for October. The Landlord retains the right to file a claim seeking compensation for unpaid rent for October from the male with the initials "A.S."

As the Tenant vacated the rental unit on November 01, 2014, I find that she must pay rent for one day in November, at a per diem rate of \$23.33. The Landlord retains the right to file a claim seeking compensation for unpaid rent for November from the male with the initials "A.S."

As there is already a court Order prohibiting the Landlord from being in the rental unit and the tenancy with the Tenant has ended, I find that there is no need to impose restrictions on the Landlord's right to enter the rental unit.

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,423.33, for unpaid rent and I grant the Landlord a monetary Order for this amount. 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 04, 2014

Residential Tenancy Branch

