



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant's application filed November 7, 2014: CNL; RR; FF

Landlord's application filed November 19, 2014: OPR; OPL; MNR; MNDC; FF

Introduction

This Hearing dealt with the cross applications. The Tenant applied to cancel a *2 Month Notice to End Tenancy for Landlord's Use* issued October 31, 2014; for a rent reduction for repairs, services or facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlord.

The Landlord applied for an Order of Possession for Landlord's Use; an Order of Possession for Unpaid Rent; a monetary award for unpaid rent; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant.

The Hearing process was explained to the parties. Documentary evidence was reviewed and service of the documents was acknowledged by both parties. The parties also acknowledged receipt of each other's Notice of Hearing packages.

The parties gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

Issue(s) to be Decided

- Are the Notices to End Tenancy valid?
- Is the Tenant entitled to a rent reduction?
- Is the Landlord entitled to a monetary award for unpaid rent and loss of revenue?

Background and Evidence

The parties agreed on the following facts:

- This tenancy began in May, 2013.
- Monthly rent is \$1,900.00, due on the first day of each month.
- The Tenant paid a security deposit in the amount of \$950.00 at the beginning of the tenancy.
- The Tenant is in arrears of rent in the amount of \$1,000.00 for the period prior to November, 2014. The Tenant did not pay rent when it was due on November 1, 2014, and has not paid any rent for December, 2014.
- The Tenant has not disputed the 10 Day Notice to End Tenancy and has not paid any of the outstanding rent.
- The Tenant is still living in the rental unit.

The Landlord testified that he served the Tenant with the 10 Day Notice to End Tenancy on November 11, 2014, by posting the Notice to her door. The Tenant acknowledged receiving the Notice in that manner, and that she received it approximately on that day but could not recall the exact day.

The Tenant stated that she did not realize that she had to file an application to dispute the 10 Day Notice to End Tenancy. She testified that she believed that her application to cancel the 2 Month Notice to End Tenancy would cover both of the Notices.

The Tenant stated that she withheld rent because the Landlord has not made repairs to the dishwasher, dryer and various other repairs. The Tenant acknowledged that she does not have an Order from the Director allowing her to deduct any amount from rent for repairs.

The Landlord asked for an Order of Possession for December 31, 2014, in order to allow the Tenant more time to find alternate accommodation. The Landlord also asked to apply the security deposit towards partial satisfaction of his monetary award.

Analysis

Section 26 of the Act provides that a tenant must pay rent when it is due, whether or not the Landlord complies with the Act, regulation or tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. In this case, I find that the

Tenant had no such right. Therefore, I find that the 10 Day Notice to End Tenancy for Unpaid Rent is a valid notice to end the tenancy.

Having found that the 10 Day Notice to End Tenancy for Unpaid Rent is a valid notice, it is not necessary for me to consider the validity of the Two Month Notice to End Tenancy.

Section 46(5) of the Act provides that if a tenant does not pay the rent or dispute the Notice within 5 days of receipt, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Section 53 of the Act provides that an incorrect end-of-tenancy date on a notice to end tenancy is deemed to be the earliest date that complies with the Act. I accept the Landlord's testimony that the 10 Day Notice was posted to the Tenant's door on November 11, 2014. Section 90 of the Act provides that service in that manner is deemed to be effective 3 days after posting the document. Therefore, I find that the Tenant received the Notice on November 14, 2014, and that the tenancy ended on November 24, 2014.

Based on the testimony of both parties, I find that the Landlord is entitled to a monetary award, calculated as follows:

Rent arrears prior to November 1, 2014	\$1,000.00
Unpaid rent for November, 2014	\$1,900.00
Loss of revenue for December, 2014	<u>\$1,900.00</u>
TOTAL	\$4,800.00

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit in partial satisfaction of his monetary award.

The Landlord has been successful in his application and I find that he is entitled to recover the cost of the filing fee from the Tenant.

I hereby provide the Landlord with a Monetary Order, calculated as follows:

Monetary award	\$4,800.00
Recovery of filing fee	\$50.00
Less security deposit	<u>-\$950.00</u>
TOTAL after set-off of security deposit	\$3,900.00

The tenancy is over and therefore the Tenant's application for a rent reduction is dismissed. For clarity, this does not affect the Tenant's right to claim for damages under Section 67 of the Act. I find that the Tenant is not entitled to recover the cost of the filing fee from the Landlord.

Conclusion

The Tenant's application is dismissed in its entirety.

I hereby provide the Landlord with an Order of Possession effective **1:00 p.m., December 31, 2014**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord with a Monetary Order in the amount of **\$3,900.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: December 12, 2014

Residential Tenancy Branch

