



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant's application filed November 17, 2014: CNC; MNDC; O

Landlord's application filed November 27, 2014: OPR; MNR; MNDC; FF

Introduction

This Hearing was convened to consider cross applications. The Tenant seeks to cancel a One Month Notice to End Tenancy for Cause; compensation for damage or loss under the Act, regulation or tenancy agreement; and "other" relief.

The Landlord seeks an Order of Possession and a Monetary Order for unpaid rent and loss of revenue; and to recover the cost of the filing fee from the Tenant.

Both parties gave affirmed testimony at the Hearing.

It was determined that the Landlord received the Tenant's Notice of Hearing documents on November 19, 2014, and that the Tenant received the Landlord's Notice of Hearing documents on November 27, 2014. It was also determined that the parties exchanged copies of their documentary evidence on December 12, 2014.

Preliminary Matters

The Residential Tenancy Rules of Procedure, Rule 2.3, states that for disputes to be combined on an application they must be related. I find that that the Tenant's request for a monetary order is not sufficiently related to the main issue, which is to cancel a Notice to End Tenancy for Cause. Therefore, I dismissed the Tenant's application for a monetary order **with leave to reapply**.

I explained to the parties that I would hear evidence with respect to the Notice to End Tenancy for Unpaid Rent first and that depending on whether I determined it to be a valid notice, we may not have to hear evidence regarding the Notice to End Tenancy for Cause.

Issues to be Decided

1. Are the Notices valid notices to end the tenancy?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

This tenancy began on August 1, 2014, but the Landlord allowed the Tenant to move in a few days early. Monthly rent is \$1,650.00, due on the first day of each month. The Tenant was required to pay a security deposit in the amount of \$825.00, but has not paid the security deposit.

The Tenant testified that she received the Notice to End Tenancy for Unpaid Rent on November 20, 2014. She stated that she did not dispute the Notice because she had already disputed the Notice to End Tenancy for Cause and she didn't think she had to dispute both Notices.

The Tenant stated that the Landlord changed the key to the mail box and would not give her a copy so she could collect her mail.

The Tenant testified that she tried to pay rent to the Landlord, but the Landlord would not accept it. The Landlord stated that the Tenant tried to pay rent for November and December, 2014, on December 2, 2014, and that she told the Tenant she would wait for the Hearing. The Landlord stated that rent is owed for November and December, 2014.

The Landlord asked for an Order of Possession effective January 17, 2015, in order to allow the Tenant more time to find alternate accommodation.

Analysis

Section 26 of the Act requires a tenant to pay rent when it is due unless the tenant has a right under the Act to deduct all or a portion of the rent. In this case, the Tenant did not have a right under the Act to withhold the rent.

Section 46 of the Act requires a tenant to pay the outstanding rent or file an application disputing a 10 day Notice to End Tenancy for Unpaid Rent within 5 days of being served with the Notice. In this case, the Tenant did not file an application disputing the Notice to End Tenancy for Unpaid Rent or pay the outstanding rent within 5 days of receipt of the Notice. Therefore, the Tenant is conclusively presumed under section 46 of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Notice to End Tenancy for Unpaid Rent is a valid notice, that the tenancy ended on November 30, 2014, and that the Tenant is overholding. I find that the Landlord is entitled to an Order of Possession and a Monetary Order for Unpaid rent for November, 2014, and loss of revenue for the month of December, 2014, for a total of **\$3,300.00**. It is premature to award the Landlord a monetary award for the month of January, 2015, as the Landlord may be able to re-rent the rental unit for a portion of January, 2015. Therefore, her application for loss of revenue for the month of January, 2015 is **dismissed with leave to reapply**.

Having found that the tenancy ended on November 30, 2014, there is no need to make a determination with respect to the validity of the Notice to End Tenancy for Cause. It is

important to note that a copy of the Notice to End Tenancy for Cause was not provided in evidence.

The Landlord's application had merit and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

I order that the Landlord provide the Tenant with a key to the mail box so that she can collect her mail for the remainder of the tenancy.

Both parties gave testimony with respect to issues which were not relevant to the Notice to End Tenancy for Unpaid Rent. I have not recorded any of the testimony that was not relevant to my Decision.

Conclusion

The Tenant's application for compensation for damage or loss under the Act, regulation or tenancy agreement is **dismissed with leave to reapply**.

I ORDER that the Landlord provide the Tenant with a key to the mail box.

I hereby provide the Landlord with an Order of Possession effective **1:00 p.m., January 17, 2015**, for service upon the Tenant. 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 **\$3,350.00** for service upon the Tenant. This Order may be filed in the Provincial Court 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: December 19, 2014

Residential Tenancy Branch

