



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with applications by the tenant and by the landlord. The tenant applied to dispute a Notice to End Tenancy, but her application was a request for more time to pay the rent. The landlord applied for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing.

Issues

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Is the landlord entitled to an order allowing retention of the security deposit?

Background and Evidence

The rental unit is a basement suite in the landlord's house in New Westminster. The tenancy began in March, 2014. The landlord did not provide a copy of the tenancy agreement. The rent is \$750.00 per month. The tenant paid a security deposit of \$375.00 at the start of the tenancy. At the hearing the landlord testified that the tenant has failed to pay rent for a number of months. The tenant agreed that the rent has not been paid for five months from August to and including December. On November 15, 2014 the landlord personally served the tenant with a Notice to End Tenancy for non-payment of rent. The tenant acknowledged receiving the Notice to End Tenancy. The landlord testified that in addition to unpaid rent of \$3750.00 for five months there is a further \$120.00 in arrears that formed part of a cheque in the amount of \$870.00 that was returned "NSF". The landlord also claimed that there were additional amounts due for utilities. The landlord said that the tenant was supposed to make \$20.00 payments

for utilities every other month, but he did not submit any documentation authorizing such a charge in addition to rent.

The tenant said at the hearing that she was holding the sum of \$2,000.00 and would pay it to the landlord if he let her stay in the rental unit. She said that she has not been able to find other accommodation for herself and her son.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

Order of Possession - Based on the above background, evidence and analysis I find that the landlord is entitled to an order of possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Monetary Order and Security Deposit - I find that the landlord has established a total monetary claim of \$3,870.00 for the outstanding rent from August to and including December. This includes the amount of arrears that were paid by cheque that was returned due to insufficient funds. The landlord has not proved that the tenant is responsible for paying separate amounts for utilities and this part of the landlord's claim is dismissed. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$3,920.00. I order that the landlord retain the deposit and interest of \$375.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$3,545.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord said at the hearing that if the tenant immediately paid him the sum of \$2,000.00 on account of the amount owed for rent, he would be prepared to allow her to

stay in the rental unit until December 31, 2014. The landlord has the discretion to withhold enforcement of the order for possession upon those terms, if he chooses to do so.

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 18, 2014

Residential Tenancy Branch

