



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: OPR, MNR, MNDC, MNSD, FF
Tenant: CNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and two agents for the landlord.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Section 46 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on June 25, 2014 for a 6 month fixed term tenancy beginning on July 1, 2014 that converted to a month to month tenancy on January 1, 2015 for the monthly rent of \$1,000.00 due on the 1st of each month and a security deposit of \$500.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on March 7, 2015 with an effective vacancy date of March 17, 2015 due to \$2,025.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the landlord failed to pay the full rent owed for the months of February and March 2015 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on March 7, 2015 at 5:01 p.m. and that this service was witnessed by a third party. The landlord submits the tenant also failed to pay rent for the month of April 2015.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full but did apply to dispute the Notice to End Tenancy on March 9, 2015.

The tenant submits that she stopped paying rent due to “unsuitable conditions, mold, infestations of cockroaches, landlord does not care of these issues” [reproduced as written].

Analysis

I have reviewed all evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice was received by the tenant on March 7, 2015 and the effective date of the notice was March 17, 2015. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has the right under this *Act* to deduct all or a portion of the rent.

Despite the tenant’s testimony I find that she has provided no authority under the *Act* to deduct any amount of rent and as such was required to pay all outstanding rent to the landlord within 5 days of receiving the 10 Day Notice to End Tenancy for Unpaid Rent. As the tenant had no authority to withhold rent and failed to pay the rent as required by the notice, I find the Notice to be valid and effective.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3,050.00** comprised of \$3,000.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$500.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,550.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: April 13, 2015

Residential Tenancy Branch

