



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OPR, MNR, MND, MNSD, FF

Introduction

This was a cross-application hearing.

On April 13, 2015 the tenant applied to cancel a 1 month Notice to end tenancy for cause. The landlord said that he was given a copy of the Notice of hearing by an unknown person who was in the tenant's rental unit.

On May 7, 2015 the landlord applied requesting an Order of possession for unpaid rent, compensation for unpaid rent and utilities, damage to the rental unit, compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fee.

The landlord provided affirmed testimony that on May 7, 2015 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent to the tenant via registered mail to the rental unit address. A Canada Post tracking number was provided as evidence of service. The mail was not returned to the landlord.

These documents are deemed to have been served on the fifth day after mailing, in accordance with section 89 and 90 of the Act, however the tenant did not appear at the hearing.

Preliminary Matters

The landlord claimed the cost of damage to the rental unit and unpaid June 2015 rent. As the damage has not been assessed, the tenancy has not ended and June rent is not yet due, this portion of the application is severed and dismissed with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to compensation for unpaid April and May 2015 rent and hydro costs?

May the landlord retain the security deposit?

Background and Evidence

The tenancy commenced on November 1, 2013 for a fixed term ending October 2015. Rent is \$1,400.00 per month due on the first day of each month. A security deposit in the sum of \$700.00 was paid. A copy of the tenancy agreement and addendum was supplied as evidence.

The tenant applied to cancel a 1 month Notice to end tenancy issued for cause. The tenant did not supply a copy of the Notice. The landlord submitted a copy of a 1 month Notice issued on April 3, 2015 with an effective date of March 31, 2015. The Notice indicated a number of reasons.

The tenant has not paid \$130.00 of April 2015 rent owed and did not pay any rent in May. The landlord has issued a 10 day Notice to end tenancy for unpaid rent and utilities.

The landlord supplied copies of hydro bills that have been given to the tenant immediately after receipt by the landlord. The addendum attached to the tenancy agreement requires the tenant to pay one-half of the utilities. The tenant had the utility in her name. She collected payment from the occupants of the lower suite but did not apply those payments to the hydro bills. The hydro service was then disconnected. The tenant had not made any payments for hydro. The landlord then placed the hydro in his name and made a \$540.00 payment on February 27, 2015 and \$213.97 payment on March 3, 2015.

Based on the two bills issued on February 26 and April 16, 2015, the landlord is claiming the tenants share in the sum of \$292.71 for the February 2015 bill and \$246.37 for the April 2015 bill.

The landlord said that the utility bills will remain in their name and that they will collect sums owed by the tenants.

Analysis

The tenant disputed the only 1 month Notice to end tenancy for cause that has been issued by the landlord. As the tenant has not attended the hearing in support of the application I find that the tenant's application is dismissed.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the 1 month Notice to end tenancy for cause effective date is changed to May 31, 2015.

Section 47(5) of the Act provides:

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

*(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
(b) must vacate the rental unit by that date.*

As the tenant failed to attend the hearing in support of her application I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, May 31, 2015.

Therefore, based on section 47(5) of the Act and section 55(2)(b) of the Act, I find that the landlord is entitled to an Order of possession.

The landlord has been granted an Order of possession that is effective at **1 p.m. on May 31, 2015**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord is entitled to compensation in the sum of \$1,530.00 for unpaid April and May 2015 rent.

I find that the tenant has failed to pay the utility costs as required by the addendum signed by the parties. Based on verification supplied by the landlord I find that the landlord is entitled to compensation in the sum of \$539.08 for hydro costs to April 14, 2015.

Pursuant to section 72 of the Act I find that the landlord is entitled to retain the \$700.00 security deposit in partial satisfaction of the claim.

Based on these determinations I grant the landlord a monetary Order in the sum of or \$1,419.08. 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

Conclusion

The landlord is entitled to an Order of possession.

The landlord is entitled to compensation for unpaid April and May 2015 rent and hydro costs.

The balance of the landlord's application is severed with leave to reapply.

The tenant's application is dismissed.

This decision is final and binding and 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: May 28, 2015

Residential Tenancy Branch

