



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF, CNR, MT

Introduction

This was a cross-application hearing.

The tenant applied for an extension of time to cancel a 10 day Notice to end tenancy and to cancel a Notice to end tenancy for unpaid rent issued on April 9, 2015 and to recover the filing fee costs.

The landlord has requested an Order of possession for unpaid rent, compensation for unpaid rent and loss of rent revenue, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant submitted late evidence to the Residential Tenancy Branch. That evidence was not given to the landlord. Therefore, the evidence was set aside. The tenant was at liberty to make oral submissions.

The tenant confirmed receipt of the hearing package sent to each tenant via registered mail on April 24, 2015. The tenant did not have the landlord's evidence before her as her spouse has that evidence. There was no dispute that the landlord's evidence had been given to the tenant.

The landlord said that the male tenant was served with Notice of the hearing sent via registered mail. The tenant present at the hearing confirmed the male tenant had

received the documents. He was not present at the hearing. From the evidence before me I find that the male tenant was served with Notice of the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent and loss of rent revenue?

May the landlord retain the security deposit paid by the tenant?

Background and Evidence

The tenancy commenced on November 1, 2014 as a fixed term to October 31, 2015. Rent is \$1,500.00 due on the first day of each month. A security and pet deposit in the sum of \$750.00 each was paid. A copy of the signed tenancy agreement was supplied as evidence.

The landlord provided a proof of service document signed by M.B. and witnessed by D. T., declaring the Notice to end tenancy was posted to the tenant's door at 2:29 p.m. on April 9, 2015. The Notice had an effective date of April 22, 2015.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,500.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within fivedays.

The tenant said that she did not see the Notice and is not sure who would have removed it from the door. The tenant did not dispute that the landlord had posted the Notice. The tenant disputed the Notice on April 22, 2015.

The landlord said that April 2015 rent in the sum of \$1,500.00 has not been paid. Rent is pre-authorized as a withdrawal from the tenant's account but was NSF in April. The May 2015 rent was paid. June 2015 rent in the sum of \$1,500.00 was also NSF.

The landlord has adjusted the sum claimed from \$4,500.00 to \$3,000.0 for April and June 2015 rent and loss of revenue.

The tenant confirmed rent has not been paid for April and June 2015. The tenant said a number of repairs had been made to the unit and that she had reached agreement with the landlord that rent would be reduced by \$2,500.00. The tenant does not possess any written confirmation of a rent reduction agreed to by the landlord.

The landlord confirmed that she did meet with the tenant to discuss repairs. The tenant had a hand-written list of items that formed her reasons for rent reduction. The tenant did not supply the landlord with a copy of that list and there was no agreement reached regarding any rent reduction.

Analysis

There is no dispute that the tenant received the Notice ending tenancy as it was disputed on April 22, 2015. Therefore, I find, on the balance of probabilities that the Notice is deemed served effective April 12, 2015; in accordance with section 90 of the Act. The tenant did not disagree that the Notice had been posted on April 9, 2015.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenants are deemed to have received this Notice on April 12, 2015, I find that the earliest effective date of the Notice is April 22, 2015.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me the tenant did apply to dispute the Notice but did so outside of the required five days; by April 17, 2015. The tenant has confirmed that April rent was not paid. Therefore, pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended on the effective date of the Notice; April 22, 2015.

Even if the tenant at this hearing had first seen the Notice on April 22, 2015, the tenant would have been required to pay the rent no later than April 27, 2015. That did not occur.

If the tenant believed there was an agreement for rent reduction the rent should have been paid and then the dispute regarding rent payments dealt with. When the tenants did not meet the requirements of the legislation by paying the rent within five days section 46(5) of the Act determines the tenants are conclusively presumed to have accepted the tenancy ended.

The tenant provided no evidence in support of her submission that rent had been reduced; therefore, I have relied upon the written tenancy agreement terms, signed by the parties.

In the absence of evidence to the contrary, I find that the tenants have not paid rent and loss of rent revenue beyond April 22, 2015 in the amount of \$3,000.00 for April and June 2015 and that the landlord is entitled to compensation in that amount.

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the security and pet deposits totaling \$1,500.00 in partial satisfaction of the claim.

The landlord has been granted an Order of possession that is effective two days after service to the tenants. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,550.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The tenant's application requesting more time to dispute the Notice and to cancel the Notice is dismissed.

Conclusion

The landlord is entitled to an Order of possession and monetary Order for unpaid rent.

The landlord may retain the security and pet deposits.

The landlord is entitled to filing fee costs.

The tenant's application is dismissed.

This decision is final and binding on the parties, unless otherwise provided under the Act, 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: June 05, 2015

Residential Tenancy Branch

