



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNDC, FF (Landlord's Application)
CNR, CNC, FF (Tenant's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on May 1, 2015 and by the Landlord on May 13, 2015.

The Landlord and Tenant appeared for the hearing. The Tenant provided affirmed testimony and the Landlord provided affirmed testimony through a translator. The hearing process was explained to the parties and they had no questions about the proceedings.

Preliminary Issues

The Tenant confirmed receipt of the Landlord's Application. However, the Landlord denied receipt of the Tenant's Application. Before I proceeded to take evidence from the parties on the service of the Tenant's Application, the Tenant informed me that she was in the process of moving out of the rental unit and would be out by the end of the day of this hearing. The Tenant took no issue with the Landlords being issued with an Order of Possession to enforce the ending of the tenancy as per the Tenant's testimony that she would be vacating the rental unit.

As a result, I issued the Landlord with an Order of Possession which is effective two days after service on the Tenant. If the Tenant fails to vacate the rental unit in accordance with her testimony, the Landlord is able to enforce the order in the Supreme Court of British Columbia as an order of that court.

Accordingly, as the Tenant is vacating the rental suite, I dismissed the Tenant's Application to cancel the notice to end tenancy for cause and the notice to end tenancy for unpaid rent and utilities, as these are now moot issues. I also deny the Tenant's claim to recover the filing fee as I made no findings on her Application.

The hearing continued to hear the Landlord's monetary claim for unpaid rent and to recover the filing fee. The Landlord started providing evidence with regards to unpaid rent amounts during this tenancy. However, the Landlord provided conflicting and confusing evidence in respect to rent payments which the Tenant denied. The Landlord's testimony also conflicted with his written submissions including rent receipts which had been provided into evidence prior to the hearing. However, the Landlord did not retain a copy of these receipts for the hearing and the Tenant denied being provided a copy of them prior to this hearing in accordance with the Rules of Procedure.

The Landlord considered his Application and withdrew his monetary claim for unpaid rent and only wanted to deal with unpaid rent for June 2015 which the Tenant confirmed had not been paid. As a result, I dismissed the Landlord's Application for unpaid rent prior to June 2015 with leave to re-apply.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent for June 2015?

Background and Evidence

Both parties agreed that rent under this verbal tenancy agreement was payable by the Tenant in the amount of \$650.00 on the first day of each month.

The Landlord testified that the Tenant had not paid any rent for June 2015 in the amount of \$650.00. The Tenant testified that she had not paid rent for June 2015 because she was vacating the rental unit today. The Tenant submitted that she would only be responsible for two weeks rent and the Landlord had her security deposit for this period of time.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not the landlord complies with the Act, unless the Tenant has authority under the Act to withhold or deduct payment. Section 21 of the Act also provides that a tenant must not apply a security deposit as rent unless a landlord gives written consent.

I find the Tenant is not able to vacate the rental unit and automatically assume the Landlord will keep her security deposit in lieu of unpaid rent. I also find that as the Tenant is vacating in the middle of the June 2015 month without any prior notice to the

Landlord, this will not give sufficient time for the Landlord to re-rent the suite for the loss incurred for the remainder of June 2015. Therefore, I award the Landlord June 2015 rent in the amount of \$650.00.

As the Landlord has been partially successful in his claim, the Landlord is also entitled to recover from the Tenant the \$50.00 filing fee for the cost of this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$700.00**.

As a result, the Landlord is issued with a Monetary Order for \$700.00. This order must be served on the Tenant and may then be filed in the Small Claims Court and enforced as an order of that court if the Tenant fails to make payment.

Conclusion

The Landlord is granted an Order of Possession. The Tenant has breached the Act by not paying rent in accordance with the Act. The Landlord is also issued with a Monetary Order for June 2015 rent. The remainder of the Landlord's monetary claim for unpaid rent is dismissed with leave to re-apply. Copies of the orders are attached to the Landlord's copy of this decision.

The Tenant's Application is dismissed without leave to re-apply.

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: June 15, 2015

Residential Tenancy Branch

