



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR MNR MNSD MNDC FF
For the tenant: CNR

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “*Act*”).

The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for authorization to keep all or part of the tenant’s security deposit, and to recover the cost of the filing fee.

The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”).

The tenant, the landlord, a tenant advocate, and a support person for the landlord attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

Both parties confirmed receiving the documentary evidence package from the other party prior to the hearing, and that they had the opportunity to review that evidence prior to the hearing. I find the parties were sufficiently served in accordance with the *Act*.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the 10 Day Notice dated June 1, 2015, be cancelled or upheld under the *Act*?
- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to recover the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on April 1, 2015. Monthly rent in the amount of \$950 is due on the first day of each month. The tenant paid a security deposit of \$450 at the start of the tenancy, which the landlord continues to hold.

The landlord is claiming \$1,400 in unpaid rent, comprised of \$450 in unpaid rent for May 2015, and \$950 in unpaid rent for June 2015. The tenant testified that she did not pay \$450 for May 2015 rent and did not pay \$950 for June 2015 rent.

While the tenant originally testified that she vacated the rental unit on July 1, 2015, the tenant later confirmed that she did not return the rental keys by regular mail to the landlords until the day before the hearing, July 14, 2015. The landlords testified that they have not received the rental unit keys to date.

A copy of the 10 Day Notice dated June 1, 2015, was submitted in evidence. The tenant confirmed that she received the 10 Day Notice on June 1, 2015 which indicates that \$450 in unpaid rent was owed as of May 1, 2015. The tenant disputed the 10 Day Notice on June 4, 2015.

The landlord stated that he was still requesting an order of possession as he has not received the rental unit keys from the tenant yet, and as a result, consider her to still be occupying the rental unit as a result.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

Tenant's application – I dismiss the tenant's application to cancel the 10 Day Notice due to insufficient evidence, as the tenant confirmed that she failed to pay \$450 of May 2015 rent, and failed to pay \$950 rent for June 2015. I uphold the landlord's 10 Day Notice dated June 1, 2015.

Order of Possession – The effective vacancy date of the 10 Day Notice was June 10, 2015, which automatically corrects under section 53 of the *Act* to June 11, 2015 as the 10 Day Notice was not served and dated until June 1, 2015. The effective vacancy date of the 10 Day Notice, June 11, 2015, has passed. Given the landlord's request for an order of possession, and pursuant to section 55 of the *Act*, once I dismissed the tenant's application to cancel the 10 Day Notice and I upheld the landlord's 10 Day Notice, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenant.

Claim for unpaid rent – The tenant did not dispute the amount of rent being claimed as unpaid by the landlord. I find the landlord has met the burden of proof and has established a monetary claim of \$1,400 in unpaid rent, comprised of \$450 for the unpaid portion of May 2015 rent, plus \$950 for the unpaid portion of June 2015 rent. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month.

As the landlord has succeeded with their application, **I grant** the landlord the recovery of their **\$50** filing fee.

Monetary Order – **I find** the landlord has established a total monetary claim of **\$1,450**, comprised of \$1,400 in unpaid rent, plus the \$50 filing fee.

I ORDER the landlord to retain the tenant's full security deposit of \$450 in partial satisfaction of the landlord's monetary claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$1,000**.

Conclusion

The tenant's application to cancel the 10 Day Notice is dismissed, without leave to reapply, due to insufficient evidence.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. The tenant must be served with the order of possession and the

order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has been ordered to retain the tenant's full security deposit of \$450 in partial satisfaction of the landlord's \$1,450 monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the net balance owing by the tenant to the landlord in the amount of \$1,000. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: July 16, 2015

Residential Tenancy Branch

