



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNR, MT, FF

For the landlord: MNDS, OPR, MNDC, MNR, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act ("Act").

The tenant applied an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice"), for an order granting more time to make an application to cancel a notice to end tenancy, and for recovery of the filing fee paid for this application.

The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for money owed or compensation for damage or loss and unpaid rent, for authority to retain the tenant's security deposit, and for recovery of the filing fee paid for this application.

The tenant and the landlord attended the hearing. At the beginning of the hearing, neither party raised any issue regarding the service of the other's evidence. The tenant disagreed with the landlord's statement as to the method of service of her application; however, the tenant confirmed its receipt.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-I have determined that the portion of the landlord's amended application dealing with a monetary claim for damage to the rental unit and utilities are unrelated to the primary issue of disputing or enforcing the Notice. Utilities were not made part of the landlord's Notice.

As a result, pursuant to section 2.3 of the Rules, I have severed the landlord's amended application and dealt only with the issue raised by both parties regarding the Notice. The portion of the landlord's amended application that was severed is dismissed, with leave to reapply.

Preliminary matter#2-The tenant requested more time to make an application in dispute of the Notice; however, the evidence shows that the tenant filed his application within the required time frame. I therefore declined to consider his request.

Procedural matter-

The landlord amended her original application in order to list alias names for the tenant, due to having discovered that the tenant does use other names, according to the landlord.

During the hearing, after the landlord had pointed out her amended application, the tenant did not raise any disagreement that he does use other names, and as a result, I have included the alias names in this Decision and any associated orders.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

There was no written tenancy agreement. The tenant submitted the tenancy started on January 15 and the landlord submitted that it started on February 15, 2015. The tenant submitted that he was in the process of vacating the rental unit, and would be out the day following the hearing. The landlord submitted that she did not receive this notice from the tenant and was not aware he was vacating.

The parties agreed that monthly rent is \$1700.00, due on the 1st day of the month, and that the tenant paid a security deposit and a pet damage deposit of \$850.00 each.

Pursuant to the Rules, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

Landlord's application-

The landlord submitted that she served the tenant with the Notice on June 9, 2015, by leaving it with the tenant, listing unpaid rent of \$1700.00 as of June 1, 2015, and an effective end of tenancy date of June 19, 2015. The landlord submitted a copy of the Notice into evidence.

The Notice informed the tenant that he had 5 days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice or to pay the rent in full; otherwise the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

The landlord asserted that since the issuance of the Notices, she has not received any rent payments from the tenant and is requesting an order of possession for the rental unit and a monetary order for unpaid rent.

Tenant's response-

The tenant confirmed that he had not paid rent for June, July, and August 2015.

Analysis

Landlord's Application:

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to pay rent by the date it is due, the landlord may serve the tenant with a Notice under section 46 of the Act.

In the case before me, although the tenant filed an application to dispute the Notice within the 5 days allowed under 46(4) of the Act, I find the landlord submitted sufficient oral and documentary evidence that the tenant owed the landlord rent when the Notice

was issued, that he did not pay all of the rent owed to the landlord within five days of receiving the Notice, and did not demonstrate that he had a legal right to withhold rent.

Therefore, I find the tenancy has ended due to the tenant's failure to pay rent in accordance with the Act and the tenancy agreement and the landlord is entitled to regain possession of the rental unit.

I therefore find that the landlord is entitled to and I grant an order of possession for the rental unit effective 2 days after service of the order upon the tenant. The order of possession for the rental unit is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

I also find that the landlord submitted sufficient evidence to show that the tenant owed and failed to pay rent for June, July, and August 2015, and is therefore entitled to a monetary award of \$5200.00, comprised of outstanding rent of \$1700.00 for June, July, and August, 2015, each, and the \$100.00 filing fee paid by the landlord for this application.

At the landlord's request, I allow the landlord to retain the tenant's security deposit and pet damage deposit of \$850.00 each in partial satisfaction of her monetary award.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$3500.00, which is enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

Tenant's application:

Due to the above, the tenant's application for dispute resolution seeking a cancellation of the Notice is dismissed without leave to reapply as I find the Notice issued by the landlord has been supported by the landlord and as I have granted the landlord's application for an order of possession for the rental unit and a monetary order.

Conclusion

The landlord's application for an order of possession for the rental unit and a monetary order for unpaid rent has been granted.

The portion of the landlord's application for other monetary compensation is dismissed with leave to reapply.

The tenant's application is dismissed, without leave to reapply.

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: August 7, 2015

Residential Tenancy Branch

