



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, FF (Landlord's Application)
 CNR, MNDC, RP, PSF, LRE (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 June 8, 2015 and by the Landlord on June 15, 2015.

The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent, and to recover the filing fee from the Tenant. The Tenant applied to: cancel the notice to end tenancy; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"); to make repairs to the unit; to provide services or facilities required by law; and, to suspend or set conditions on the Landlord's right to enter the rental unit.

The Landlord named on the Application, who was the property manager for the rental unit, appeared for the hearing with the owner of the rental unit. Both parties provided affirmed testimony as well as a copy of the notice to end tenancy. There was no appearance for the Tenant despite the fact that the Tenant's Application was scheduled to be heard at the same time as the Landlord's Application in this hearing. As there was no appearance for the Tenant during the 26 minute duration of the hearing, I dismissed the Tenant's Application without leave to re-apply.

I then turned my mind to the service of the Landlord's Application to the Tenant. The Landlord testified that she personally served a copy of her Application and the Notice of Hearing documents to the Tenant on June 19, 2015. In the absence of any evidence before me to dispute this, I accept that the Tenant was personally served with the documents for this hearing pursuant to Section 89(1) (a) of the Act.

The hearing continued to hear the undisputed evidence of the Landlord and the owner. However, I have only documented that evidence which I relied upon to make findings in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the Landlord's monetary claim?

Background and Evidence

The Landlord testified that this month to month tenancy started on October 1, 2014. Rent of \$550.00 is payable on the first day of each month. The Tenant paid a security deposit of \$275.00 at the start of the tenancy which the Landlord still retains.

The Landlord testified that the Tenant failed to pay rent for \$575.00 on June 1, 2015. As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") by posting it to the Tenant's door on June 3, 2015. The Notice was provided into evidence with a vacancy date of June 16, 2015.

The Landlord testified that since making his Application, the Tenant has also failed to pay rent for July and August 2015. The owner explained that four months of rent was applied for in anticipation that they may get a hearing date in September, 2015. However, the owner confirmed that the Tenant was in rental arrears in the amount of \$1,650.00 to date.

The Landlord explained that the Tenant had not paid rent because she alleges that they have failed to complete repairs to the property. However, the Landlord disputes these allegations. As a result, the Landlord seeks an Order of Possession for unpaid rent. The Landlord also requested that they be allowed to keep the Tenant's security deposit in partial satisfaction of the monetary claim.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under the tenancy agreement **whether or not** the landlord complies with the Act, unless the tenant has right under the Act to withhold it or deduct from it.

Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the

Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and must vacate the rental unit on the vacancy date of the Notice. Having examined the copy of the Notice provided into evidence, I find the contents on the approved form complied with the requirements of Section 52 of the Act.

I accept the Landlord's undisputed evidence that the Notice was served to the Tenant by attaching it to the rental unit door on June 3, 2015 in accordance with Section 88(g) of the Act. The Tenant indicated on the second page of her Application that she received the Notice on June 3, 2015. Therefore, the Tenant would have had until June 8, 2015 to pay the outstanding rent on the Notice or make an Application to dispute the Notice.

While the Tenant did make an Application to dispute the Notice within the required time limit prescribed by the Act, the Tenant did not appear for the hearing to explain why she was disputing the Notice and to rebut the Landlord's Application. Neither is there any evidence before me that the Tenant has paid rent for June 2015.

Therefore, I find the tenancy must now end in accordance with the Notice. As the vacancy date on the Notice has now passed and the Tenant has also failed to pay rent for July and August 2015, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenant. This order must be served on the Tenant and can then be enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit.

The Landlord is also awarded June, July and August 2015 unpaid rent in the amount of **\$1,650.00** (\$550 x 3). The Landlord's claim for September 2015 rent is dismissed with leave to re-apply after the Landlord makes efforts to re-rent the suite for September 2015.

As the Landlord has been successful in her Application, 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 **\$1,700.00** (\$1,650.00 + \$50.00). As the Landlord already holds the Tenant's **\$275.00** security deposit, I grant the Landlord's request to keep this amount pursuant to Section 72(2) (b) of the Act in partial satisfaction of the monetary claim.

The Landlord is issued with a Monetary Order for the outstanding balance of **\$1,425.00** (\$1,700.00 - \$275.00). 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.

Copies of the above orders are attached to the Landlord's copy of this Decision.

Conclusion

The Tenant has breached the Act by not paying rent. Therefore, the Landlord is granted an Order of Possession and may keep the Tenant's security deposit. The Landlord is issued with a Monetary Order for the outstanding balance of unpaid rent to date and the filing fee in the amount of \$1,450.00. The Landlord's claim for September 2015 rent is premature and is therefore dismissed with leave to re-apply.

The Tenant's Application is dismissed **without** leave to re-apply as she failed to appear for the hearing to present and prove her Application.

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 07, 2015

Residential Tenancy Branch

