



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNR

For the landlord: OPR, MNDC, MNR, MNSD, 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 for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice") issued by the landlord.

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 for unpaid rent pursuant to their Notice, for authority to retain the tenant's security deposit, and for recovery of the filing fee paid for this application.

The landlord attended the hearing; the tenant did not attend.

The landlord stated that she served the tenant the application for dispute resolution and notice of hearing letter by registered mail on July 23, 2015, further providing the tracking number for the registered mail.

Based upon the landlord's submissions, I find the tenant was served notice of this hearing in a manner complying with section 89(1) of the Act, and the hearing proceeded on the landlord's application in the tenant's absence.

Thereafter the landlord was provided the opportunity to present her evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence 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.

Procedural matter- In the absence of the tenant to present their claim, pursuant to section 10.1 of the Dispute Resolution Rules of Procedure (Rules), I dismiss the tenant's application, without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit, to authority to retain the tenant's security deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

The landlord supplied a written tenancy agreement showing that this tenancy began on June 7, 2015, that monthly rent is \$1400.00, and that the tenant paid a security deposit of \$700.00 at the beginning of the tenancy. The landlord confirmed that the tenant did pay the security deposit.

The landlord gave evidence that on July 11, 2015, the tenant was served with the Notice, by registered mail, listing unpaid rent of \$1400.00 as of July 1, 2015. The effective vacancy date listed on the Notice was July 22, 2015.

The Notice informed the tenant that she 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 tenant did file her application to dispute the Notice, but did not attend the hearing in support of her application and it has been dismissed.

The landlord submitted that since the Notice was issued to the tenant, there have been no rent payments made by the tenant and the tenant still owes the monthly rent for July and now for August and September, 2015, as the tenant has not vacated the rental unit.

The landlord submitted further that the tenant has issued post-dated rent cheques, that she deposited the rent cheques for July, in July, for August, in August, and for September, in September, but all cheques were returned due to insufficient funds.

The landlord's monetary claim is \$4200.00, comprised of unpaid rent for July, August, and September 2015.

The landlord's additional relevant documentary evidence included, but was not limited to, copies of the post-dated rent cheques and the Notice.

Analysis

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 as required, the landlord may issue the tenant with a Notice pursuant to section 46(1) of the Act.

I find the landlord submitted sufficient evidence that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, that the tenant owed the rent when the Notice was issued, did not pay the outstanding rent within 5 days of receiving the Notice and did not vacate the rental unit. Additionally the tenant did not appear at the hearing in support of her own application.

Therefore, I find the tenancy has ended due to the tenant's failure to pay rent 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, pursuant to section 55 of the Act. 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 after being served, 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 support their monetary claim and is entitled to a monetary award of \$4250.00 comprised of outstanding rent of \$4200.00 through September, 2015, and the \$50.00 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 of \$700.00 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 \$3550.00, 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.

Conclusion

The tenant's application is dismissed due to her failure to attend the hearing and as I have granted the landlord's application.

The landlord's application for an order of possession for the rental unit and a monetary order is granted.

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: September 22, 2015

Residential Tenancy Branch

