



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, 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 (the "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 pursuant to the Notice, a monetary order for money owed or compensation for damage or loss and for unpaid rent, 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 he served the tenant his application for dispute resolution and notice of hearing letter by registered mail within 3 days of making his application, and that the registered mail was not returned to him, verifying that the tenant collected the registered mail.

Based upon the landlord's submissions, I accept 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 his 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 Rules, I dismiss the application of the tenant, without leave to reapply.

Procedural matter #2-The landlord submitted that the tenant vacated the rental unit 4-5 days prior to the hearing. The landlord also requested that his monetary claim be amended to include a claim for rental unit for October 2015, as the tenant has just vacated the rental unit recently. Pursuant to section 64(3)(c) of the Act, I amend the landlord's application removing his request for an order of possession for the rental unit and allow the landlord's request to amend his application to include a claim for the rental unit for October 2015.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation and for recovery of the filing fee paid for this application?

Background and Evidence

The landlord submitted that the tenancy began in January 2011, that monthly rent began at \$850.00, but was reduced to \$800.00 during the tenancy, and that the tenant paid a security deposit of \$425.00 at the beginning of the tenancy.

Although not submitted, the landlord stated that the parties had a written tenancy agreement for this tenancy, and that a term in the written agreement requires the tenant to pay 50% of the utilities incurred for the residential property, shared between an upper and a lower suite.

The landlord submitted that he served the tenant with the Notice on August 29, 2015, by leaving it with the tenant. The Notice listed unpaid rent of \$1800.00 and unpaid utilities of \$164.72 that was due on August 1, 2015 and an effective move-out date of September 8, 2015.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within 5 days, or in this case, September 3, 2015. The Notice also explained that alternatively the tenant had 5 days to dispute the Notice by making an application for dispute resolution. In this case, the tenant did file an application to dispute the Notice, but not within 5 days of receiving the Notice, as the tenant's application was filed on September 10, 2015.

The landlord asserted that since the issuance of the Notice, the tenant did not pay the rent owed prior to vacating 4-5 days prior to the hearing.

The landlord's monetary claim listed on his application was \$3055.95. The landlord explained that that this sum was comprised of unpaid rent for June, July, August, and September 2015, or \$3200.00, and the balance was for unpaid utilities through the date of his application, as the tenant failed to pay her share after being sent the utilities bills.

It is noted that the unpaid rent for those 4 months total \$3200.00, which fails to leave a balance for his monetary claim.

The landlord submitted a spreadsheet with payments made by the tenant during the tenancy, which combined amounts owed and paid for both the unpaid rent and the unpaid utilities, and utilities bills.

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 comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

Based upon the landlord's undisputed evidence, I find the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, that she owed the amount listed on the Notice as unpaid rent, and that she failed to pay this rent prior to vacating.

Although the landlord's monetary claim was not clearly particularized, I find the landlord submitted sufficient evidence to prove that the tenant failed to pay her monthly rent of \$800.00 for June, July, August, September and October 2015, and that the landlord is entitled to a monetary award for unpaid rent for those months, in the amount of \$4000.00.

I also find that the landlord failed to submit a clear breakdown of the unpaid utilities, and I therefore dismiss his claim for unpaid utilities, with leave to reapply.

I also award the landlord recovery of his filing fee of \$50.00, pursuant to section 72(1) of the Act.

I therefore find that the landlord is entitled to a total monetary award of \$4050.00, comprised of unpaid rent of \$4000.00 from June through October 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 \$425.00 in partial satisfaction of his 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 \$3625.00, which is enclosed with the landlord's Decision. To be enforceable, the monetary order must be served upon the tenant in any way recognized under section 88 of the Act.

Should the tenant fail to pay the landlord this amount without delay after the order has been served upon her, 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 landlord's application for a monetary order for unpaid rent and for recovery of the filing fee paid for this application has been granted.

The portion of the landlord's application dealing with a request for unpaid utilities is dismissed, with leave to reapply.

The tenant's application is dismissed, without leave to reapply, as she failed to attend the hearing and as I have granted the landlords' 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: October 21, 2015

Residential Tenancy Branch

