



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: RP, CNR
For the landlord: OPR, 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 for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice") issued by the landlord and an order requiring the landlord to make repairs to the rental unit.

The landlords applied for an order of possession for the rental unit pursuant to the Notice, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application. Since the date of their original application, the landlords amended their application increasing their monetary claim. The tenant ultimately agreed that she received the amended application.

The tenant and the landlords attended the hearing. At the beginning of the hearing, neither party raised any issue regarding the service of the other's evidence or application.

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- The parties submitted that the tenant has vacated the rental unit, as of October 24, 2015. I therefore determined that the hearing would proceed on the landlords' application for a monetary order for unpaid rent.

The tenant's application seeking cancellation of the Notice and an order for repairs and the portion of the landlords' application seeking an order of possession is dismissed, as the tenancy is over.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence was that this tenancy began on June 1, 2014, ended on October 24, 2015, that monthly rent for the tenant was \$1300.00, due on the 1st day of the month, and the tenant paid a security deposit of \$650.00. Into evidence the landlords submitted a copy of the written tenancy agreement.

The landlords submitted that they served the tenant with the Notice on September 3, 2015, by attaching the document to the tenant's door, listing unpaid rent of \$1300.00 due as of September 1, 2015, and an effective end of tenancy date of September 14, 2015. The landlord submitted a copy of the Notice into evidence.

Section 90 of the Act states that documents served by attaching to the door are deemed delivered three days later. Thus the tenant was deemed to have received the Notice on September 6, 2015, and the effective move out date is automatically changed to September 16, 2015, pursuant to section 53 of the Act.

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 landlords asserted that since the issuance of the Notice, the tenant paid a single payment of \$300.00 on September 3, 2015, and did not pay rent for the duration of the tenancy. Pursuant to the landlords' amended application, the landlords' monetary claim is \$2300.00, for the balance of the September rent and unpaid rent for October 2015.

The tenant provided no dispute to the landlords' evidence.

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 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 landlords submitted sufficient oral and documentary evidence that the tenant owed the landlords rent when the Notice was issued, that she did not pay all of the rent owed to the landlord within five days of receiving the Notice, and did not demonstrate that she had a legal right to withhold rent.

I therefore find that the landlords have submitted sufficient evidence to substantiate that the tenant owed and failed to pay all rent due under the tenancy agreement for September 2015, and loss of rent revenue for October, 2015, of \$1300.00, as the tenant held over in the rental unit after the effective end of tenancy date on the Notice.

I therefore find that the landlords are entitled to a monetary award of \$2350.00, comprised of unpaid rent of \$1000.00 for September 2015, loss of rent revenue for \$1300.00 for October 2015, and the \$50.00 filing fee paid by the landlords for this application.

At the landlords' request at the hearing, I allow the landlords to retain the tenant's security deposit of \$650.00 in partial satisfaction of their monetary award of \$2350.00.

I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$1700.00, which is enclosed with the landlords' Decision.

Should the tenant fail to pay the landlords 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 landlords' application for a monetary award has been granted.

The tenant's application is dismissed, without leave to reapply, as the tenancy was over prior to the hearing.

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: November 12, 2015

Residential Tenancy Branch

