



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNR, CNC, RP

For the landlord: OPR, OPC, 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 the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") and 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") issued by the landlord and for an order requiring the landlord to make repairs to the rental unit.

The landlord applied for an order of possession for the rental unit pursuant to 10 Day Notice and the 1 Month Notice, issued by the landlord, a monetary order 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 and his agent attended the hearing; the tenant did not attend.

The landlord's agent stated that he served the tenant, "SC", with the landlord's application for dispute resolution and notice of hearing letter by leaving the documents with that tenant on or about November 25, 2015.

Based upon the landlord's submissions, I accept that tenant SC 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 their 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 tenant's application, without leave to reapply.

Additionally, the landlord's agent submitted that only tenant SC was an actual tenant, as shown on the written tenancy agreement entered into evidence. The landlord's agent submitted further that the applicant listed on the tenants' application, "GSL", was not a tenant but rather a relative of the tenant. I have therefore determined that GSL is not a tenant for this tenancy and have excluded them from any further consideration in this matter.

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 written tenancy agreement supplied by the landlord shows that this tenancy began on August 15, 2015, that monthly rent is \$1100.00, due on the 30th day of the immediately prior month, and that the tenant paid a security deposit of \$600.00.

The landlord's agent (hereafter "landlord") submitted that on November 12, 2015, they served the tenant with their Notice, by leaving it with the tenant, listing unpaid rent of \$1100.00 as of October 30, 2015. The effective vacancy date listed on the Notice was November 21, 2015. The landlord supplied a copy of the Notice listing only tenant SC as a tenant.

A 10 Day Notice to end the tenancy is not effective earlier than 10 days after the date the tenant receives the Notice. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date, November 21, 2015 is changed to November 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 not file an application to dispute the Notice, rather GSL who I have determined not to be a tenant, disputed the Notice by filing their application. Further, the tenant did not attend the hearing and the application purporting to be from a tenant has been dismissed.

The landlord submitted that unpaid rent on the date the Notice was actually served to the tenant was \$150.00, not \$1100.00, as the tenant made two separate payments in November totally \$900.00; however, since the Notice was issued to the tenant, there have been on rent payments made by the tenant and as of the date of the hearing, the tenant owed \$2350.00.

Analysis

Base on the undisputed evidence of the landlord, I find the landlord submitted sufficient evidence that the tenant was served the 10 Day Notice, that the tenant owed rent on the day the 10 Day Notice was issued, did not pay the outstanding rent within 5 days of receiving the Notice, and did not file an application in dispute of the Notice, as GSL filed the application of the tenant. I find the tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Therefore, pursuant to section 55 of the Act, I 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 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 the landlord submitted sufficient evidence to show that the tenant, under the written tenancy agreement, owed and has not paid rent in full since the Notice was issued. I therefore find the landlord is entitled to a monetary award of \$2400.00, comprised of unpaid rent for November 2015, of \$150.00 and for loss of rent revenue through the date of the hearing for \$22000.00, as the tenant is now overholding in the

rental unit after the effective end of tenancy date listed on the Notice, and the \$50.00 filing fee paid by the landlord for this application.

At the landlords' request, I allow the landlord to retain the tenant's security deposit of \$600.00 in partial satisfaction of their 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 \$1800.00, 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 their 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: January 13, 2016

Residential Tenancy Branch

