



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LANDLORD: OPR, MNR, MNSD, FF
TENANT: CNL, CNR, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notices to End Tenancy.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on December 18, 2015 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on December 11, 2015 in accordance with section 89 of the Act.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to end the tenancy?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to retain the Tenant's security deposit?

Tenant:

1. Is the Tenant entitled to an order to cancel the Notices to End Tenancy?

Background and Evidence

This tenancy started on March 15, 2015 as a month to month tenancy. The Tenant said the rent is \$1,200.00 per month plus \$150.00 per month for utilities. The Landlord said rent was \$1,350.00 per month. The Tenant said she paid a security deposit of \$600.00 on January 27, 2015. The parties agreed that no move in condition inspection report was completed.

The Landlord said that the Tenant did not pay \$100.00 of rent for each month for the months of May, 2015 to October, 2015. The Landlord said the total unpaid rent was \$600.00. As a result the Landlord personally delivered a 10 day Notice to End Tenancy for unpaid rent dated December 2, 2015 to the Tenant on December 3, 2015. The Landlord said they have not received payment on the unpaid rent and the Tenant has \$675.00 of unpaid rent for January, 2016 as well. The Landlord said they want to end the tenancy and are requesting an Order of Possession for as soon as possible if their application is successful.

The Tenant said that she was having financial issues and thought that she had made an agreement with the Landlords to reduce the utilities from \$150.00 to \$50.00 until she could recover financially. The Tenant said she has unpaid rent for January, 2016 in the amount of \$675.00 but she disputes the \$600.00 of unpaid rent from May to October, 2015.

The Landlord said they made no agreement about reducing the utility payment from \$150.00 to \$50.00.

Further the Tenant said that she did not receive page two of the 10 Day Notice to End Tenancy for Unpaid rent, therefore the Tenant said the Notice should be cancelled.

The Tenant continued to say that she also received a 2 Month Notice to End Tenancy for the Landlord's use of the Property and although she was told the Landlord was moving into the rental unit on February 29, 2016 there is no reason checked off on page two of the Notice.

The Landlord closed his remarks by saying the Tenant has not paid her rent and he wants to end the tenancy as soon as possible.

The Tenant said in closing that she would pay the rent today if the tenancy could continue to February 29, 2016 and then she would move out.

The Landlord said he wants to end the tenancy as soon as possible and he wants the unpaid rent paid.

Analysis

First it should be noted the Landlord has not applied to end the tenancy under the Two Month Notice to End Tenancy for Landlord's use of the Property therefore this Notice is not material to the hearing and to this decision. Further I heard the Tenant say that she did not receive page two of the 10 Day Notice to End Tenancy for Unpaid rent and this should void the Notice. Normally this may be a valid argument if a Tenant lost the opportunity to apply to dispute the 10 Day Notice to End Tenancy for Unpaid Rent because of not knowing the process which is on page two of the Notice, but in this case the Tenant made an application within the time limits and has disputed the Notice to End Tenancy as per page two of the Notice. I find the Tenant has not been prejudiced by not receiving page two of the 10 Day Notice to End Tenancy for unpaid rent dated December 2, 2015. Consequently I find the Notice is valid as the Tenant understood the intent of the Notice and how to dispute it.

Section 26 (1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent

I find that the Tenant has not paid the overdue rent and the Tenant does not have the right to withhold a part or all of the unpaid rent. Consequently, I find the Tenant has no grounds to dispute the Landlord's application. The Tenant's application is dismissed without leave to reapply.

I accept the Landlords' testimony and evidence that there is unpaid rent in the amount of \$600.00 for the months May through October, 2015 and there is \$675.00 of unpaid rent for January, 2016. I find the total unpaid rent is \$1,275.00. Consequently, I find for the Landlord and award the Landlords a monetary claim for unpaid rent of \$1,275.00.

Further I order the Landlord pursuant to section 67 of the Act to retain the Tenant's security deposit of \$600.00 as partial payment of the unpaid rent.

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End on the day personally served, or on December 3, 2015. Consequently, the Tenant would have

had to pay the amount stated on the Notice or apply to dispute that amount no later than December 8, 2015. The Tenant applied on December 8, 2015, but the Tenant's application has not been successful therefore; I find that the Tenant has not paid the overdue rent and has not been successful in disputing the Notice to End Tenancy. Consequently, I find pursuant to s. 55 of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

As the Landlord has been successful in this matter I also order the Landlord to recover the filing fee of \$50.00 for this proceeding from the Tenant. A Monetary Order in the amount of \$725.00 is awarded to the Landlord as represented below:

Unpaid rent	\$1,275.00	
Filing fee	\$ 50.00	
Total		\$1,325.00
Less Security Deposit	\$ 600.00	
Total		\$ 600.00
Balance Owing		\$ 725.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$725.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenant's application is dismissed without leave to reapply.

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: February 01, 2016

Residential Tenancy Branch

