



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant CNC
 Landlord OPR, OPC, MNR, 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 and to recover the filing fee for this proceeding.

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

Service of the hearing documents by the Landlord to the Tenant was done by registered mail on June 3, 2016, 2012 in accordance with section 89 of the Act. The Tenant confirmed receiving the Landlord's application and hearing package.

Service of the hearing documents by the Tenant to the Landlord done by registered mail on May 17, 2016 in accordance with section 89 of the Act. The Landlord confirmed receiving the Tenant's application and hearing package.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?
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?

Tenant:

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

Background and Evidence

This tenancy started in May, 2006 as a month to month tenancy. Rent is \$900.00 per month payable on the 15th of the month. The Tenant said she paid a security deposit of \$450.00 at the start of the tenancy. The Landlord said there was no security deposit paid to her. No move in condition inspection report was completed at the start of the tenancy.

The Landlord said that the Tenant did not pay \$400.00 for January, 2015 and has been late with the rent payment numerous times since the tenancy started. The Landlord submitted a list of dates showing late rent payments from January, 2010 to April, 2016. The Landlord said this shows at least 20 times the Tenant has been late with the rent. The Landlord continued to say they wrote the Tenant 5 times to get the \$400.00 of unpaid rent paid but the Tenant did not respond to their requests. The Landlord said she wants to end the tenancy.

The Tenant said she agrees there is unpaid rent of \$400.00 for January, 2015, but she recently tried to work out a payment plan with the Landlord and the Landlord did not agree. Further the Tenant said she makes deposits to the Landlord's bank and sometimes the bank is closed on the rent payment date therefore the rent appears to be late when she deposits the payment when the bank opens. The Tenant said they use to deal with the Landlord's husband and he was more flexible about the rent payment so the Tenant does not understand why the Landlord has issued this Notice to End Tenancy. The Tenant said she thinks the Landlord wants to end the tenancy so she can get more rent for the unit from a new tenant. The Tenant said that moving is a difficult thing and she needs time.

The Landlord said she will agree to end the tenancy on July 15, 2016.

The Tenant said she understood.

Analysis

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.

Policy guideline 38 says three late payments are the minimum number sufficient to justify a notice under these provisions.

I find that the Tenant has not paid the overdue rent of \$400.00 and the Tenant does not have the right to withhold a part or all of the unpaid rent. Further I accept the Landlord's

evidence that the Tenant has been late with the rent at least 20 times over the last 5 years. Given that the Tenant does not dispute the unpaid rent of \$400.00 and that the rent payments have been late on many occasions; I find the Tenant has not established grounds to cancel the 1 Month Notice to End Tenancy for Cause dated April 29, 2016. Consequently I dismiss the Tenant's application without leave to reapply.

As the Tenant was unsuccessful in this matter I order the Tenant to bear the \$100.00 filing fee which has already been paid.

Further as the Tenant was unsuccessful in canceling the Notice to End Tenancy, I find pursuant to s. 55 (2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect at 1:00 p.m. on July 15, 2016.

The Landlord is also entitled to a monetary order for the unpaid rent of \$400.00 and as the Landlord has been successful in this matter I order the Landlord to recover the filing fee of \$100.00 from the Tenant. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$ 400.00	
Recover filing fee	\$ 100.00	
Balance owing:		\$500.00

Conclusion

An Order of Possession effective at 1:00 p.m. on July 15, 2016 and a Monetary Order in the amount of \$500.00 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: June 14, 2016

Residential Tenancy Branch