



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LANDLORD: CNC, MNSD, MNDC, MNR, O, FF
 TENANT: MT, CNC, FF

Introduction

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlord filed seeking an Order of Possession and to end the tenancy, monetary order for compensation for unpaid rent, for damage to the unit, site or property, for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenants' security deposit and for other considerations.

The Tenant filed for more time to make the application, to cancel the notice to end tenancy and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant were done by personal deliver and registered mail on June 6, 2016 and June 9, 2016, in accordance with section 89 of the Act.

The Tenants did not appear at the hearing. Consequently I dismiss the Tenants' application without leave to reapply.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to end the tenancy?
2. Is there unpaid rent?
3. Are there damages to the unit, site or property and if so, how much?
4. Is the Landlord entitled to compensation for unpaid rent and damages and if so how much?
5. Is the Landlord entitled to retain the Tenants' deposit?

Background and Evidence

This tenancy started on December 1, 2015 as a month to month tenancy. Rent is \$1,600.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$750.00 at the start of the tenancy. No move in condition inspection report was completed by the Landlord.

The Landlord said she served the Tenant with a 1 Month Notice to End Tenancy for Cause dated April 30, 2016. She served the Notice on May 5, 2016 by personal delivery to the male Tenant. The Landlord said the Notice to End Tenancy was for multiple late rent payments but as the Tenants did not dispute the Notice to End Tenancy within 10 Days of receiving the Notice so it is their understanding the Tenants have lost the opportunity to dispute it and they have accepted the Notice to End Tenancy. The Landlord said the Tenants are living in the unit and the Landlord requested an Order of Possession for as soon as possible.

Further the Landlord said they have made a monetary claim for \$1,600.00 for unpaid rent for June, 2016 and a damage claim for \$6,531.00. The Landlord said she understood that because no condition inspection report was completed there is no based line to measure the damage to the unit. The Landlord said they tried to do a move in condition inspection but the Tenants did not co-operated. The Landlord said she understood that the damage claim will be dismissed.

The Landlord requested to retain the security deposit of \$750.00 as partial payment of the unpaid rent.

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.

The Tenant does not have the right to withhold all or a portion of the rent from the Landlord when it is due and the Tenant has been late with the rent payments numerous times. I find for the Landlord and grant the Landlord's claim for unpaid rent in the amount of \$1,600.00. I order the Landlord to retain the Tenants' security deposit of \$750.00 as partial payment of the unpaid rent.

Further pursuant to section 55 of the Act; if a tenant is unsuccessful in canceling a Notice to End Tenancy the Landlord is entitled to an Order of Possession with an effective vacancy date that is in accordance to the Notice to End Tenancy and the Act.

The Landlord's Notice to End Tenancy was served on May 5, 2016 therefore the correct effective vacancy date for that notice is June 30, 2016. I award the Landlord with an Order of Possession with an effective vacancy date of 1:00 p.m. on June 30, 2016.

Section 23 of the Act say that a landlord and tenant must do condition inspections to establish the condition of the rental unit at the start of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start of the tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

In this situation the Landlord did not complete a move in condition inspection report so the condition of the rental unit is unknown at the start of the tenancy. Consequently the Landlord cannot establish proof that the Tenant damaged the rental unit or left it in a condition that was not similar to the start of the tenancy. As a result of lack of proof to establish the condition of the rental unit at the start of the tenancy, I dismiss the Landlord's application for damages to the unit, site or property with leave to reapply.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

An Order of Possession effective June 30, 2016 has been issued to the Landlord. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession and may be enforced in the Supreme Court of British Columbia.

A monetary Order for \$850.00 has been issued to the Landlord for unpaid rent.

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 29, 2016

Residential Tenancy Branch