



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 330127 B.C. LTD
and enant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession and Monetary Order for unpaid rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The landlord's agent requested that the application be amended to seek authorization to retain the security deposit in partial satisfaction of the unpaid rent. I found this request non-prejudicial to the tenant since it reduces any Monetary Order issued to the landlord. The tenant did not object to this request. Accordingly, the application was amended to deal with the security deposit during the hearing.

I also amended the application to include the landlord's name that appears on the Notices to End Tenancy. The landlord's agent explained that the property is owned by the corporate landlord and that the landlord's agent manages the property on behalf of the corporation. The shareholder of the corporation, the agent's husband, was also present at the hearing. Accordingly, this decision identifies the corporate landlord and the landlord's agent as landlords.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent?
3. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The tenancy commenced March 1, 2014 and the tenant was required to pay rent of \$550.00 on the first day of every month. The tenant paid a security deposit of \$275.00.

It was undisputed that the tenant did not pay any rent for the months of April 2016, May 2016 and June 2016. It was also undisputed that the tenant received 10 Day Notices to End Tenancy for Unpaid Rent in the months of April, May and June 2016 and did not pay the outstanding rent or file to dispute any of the 10 Day Notices she received. I heard that the last 10 Day Notice was served on June 2, 2016. That 10 Day Notice has a stated effective date of June 11, 2016.

The tenant stated that she has been trying to find alternative accommodation but has been unsuccessful given her limited financial means. When asked whether she had a basis under the Act for withholding rent she stated that she had a slow draining bathtub and her wallet was stolen in April 2016.

The landlord's agent requested an Order of Possession as soon as possible. The landlord's agent also requested a Monetary Order for unpaid rent for April and May 2016. The landlord's agent stated that the landlord would not pursue the tenant for loss of rent for June 2016 if the tenant moved out right away.

Analysis

Under section 26 of the Act a tenant, is required to pay rent when due in accordance with their tenancy agreement even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right under the Act to withhold rent. An outstanding repair issue is not a basis for withholding rent under the Act unless the tenant has been authorized to withhold rent by the landlord or an Arbitrator. The tenant did not have such authorization in this case. A tenant's inability to pay rent due to their financial circumstances is not a basis under the Act for not paying rent. Therefore, I find the tenant was obligated to pay the monthly rent of \$550.00 by the first day of every month and she failed to meet this obligation.

Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent. In this case, it is undisputed that the tenant received three 10 Day Notices to End Tenancy for Unpaid Rent, the last one being served on June 2, 2016. Since the 10 Day Notice was served on June 2, 2016 the effective date should read June 12, 2016 at the earliest. Pursuant to section 53 of the Act, the effective date automatically changes to read June 12, 2016.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

Since the tenant did not pay the outstanding rent or dispute the 10 Day Notices she received within five days of receiving the 10 Day Notices I find the tenant conclusively presumed to have accepted that the tenancy would end and she must vacate the rental unit. Based on the last 10 Day Notice served, I find the tenancy ends June 12, 2016 and the landlord is entitled to regain possession of the rental unit on that date. Provided to the landlord with this decision is an Order of Possession effective at 1:00 p.m. on June 12, 2016.

As further information for the parties, where a tenancy has ended for unpaid rent by way of an undisputed and unpaid 10 Day Notice and the tenant remains in possession of the rental unit after the effective date of the 10 Day Notice it is unnecessary for the landlord to subsequent 10 Day Notices as doing so may result in extending the effective vacancy date, as seen in this case. Where a tenant does not vacate a rental unit by the effective date the landlord remains entitled to pursue the tenant for loss of rent for any following months and does not need to serve subsequent 10 Day Notices.

As it was undisputed that the tenant failed to pay rent that was owed for April and May 2016 I grant the landlord's request to recover \$1,100.00 from the tenant for these months. I further award the landlord recovery of the \$100.00 filing fee paid for this application. I also authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

| | |
|-------------------------------|-----------------|
| Rent: April 2016 and May 2016 | \$1,100.00 |
| Filing fee | 100.00 |
| Less: security deposit | <u>(275.00)</u> |
| Monetary Order | \$ 925.00 |

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an order of the court.

Conclusion

The landlord has been provided an Order of Possession effective at 1:00 p.m. on June 12, 2016. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$925.00 to serve and enforce as necessary and appropriate.

I have made no award for loss of rent for June 2016 as requested by the landlord but it should be noted that the landlord remains at liberty to file a subsequent Application to pursue the tenant for loss of rent for June 2016 or any other damages or losses from this tenancy as the landlord determines appropriate in the circumstances.

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 09, 2016

Residential Tenancy Branch