



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR MNR FF
Tenant: OLC RPP LRE LAT FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord’s Application was received at the Residential Tenancy Branch on August 9, 2016 (the “Landlord’s Application”). The Landlord applied for the following relief pursuant to the *Act*: an order of possession for unpaid rent or utilities; a monetary order for unpaid rent or utilities; and an order granting recovery of the filing fee.

The Tenant’s Application was received at the Residential Tenancy Branch on July 8, 2016 (the “Tenants’ Application”). The Tenant applied for the following relief pursuant to the *Act*: an order requiring the Landlord to comply with the *Act*, regulation, or tenancy agreement; an order requiring the Landlord to return the Tenant’s personal property; an order suspending or setting conditions on the Landlord’s right to enter the rental unit; an order authorizing the Tenant to change the locks to the rental unit; and an order granting recovery of the filing fee.

The Landlord attended the hearing on her own behalf, but was assisted by a family member, W.T. The Tenant also attended the hearing on her own behalf. All parties giving evidence provided their solemn affirmation.

No issues were raised with respect to service or receipt of each parties’ hearing package or supporting evidence. However, I note the Landlord’s photographic evidence, received at the Residential Tenancy Branch on September 7, 2016, was not submitted on time in accordance with Rule 3 of the Residential Tenancy Branch Rules of Procedure. Accordingly, that evidence has not been considered in this Decision.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The parties were advised that Rule 2.3 of the Residential Tenancy Branch Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. In these

circumstances, I find it appropriate to exercise my discretion to sever the Tenant's claims as these are unrelated to the end of the tenancy and the payment of rent. Accordingly, this Decision will address only the relief sought in the Landlord's Application. The Tenant is granted leave to reapply for the relief sought at a later date.

In addition, the parties confirmed during the hearing that the Tenant vacated the rental unit on August 15, 2016. An order of possession is no longer required. The Landlord's request for an order of possession will not be considered further in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

Neither party submitted a copy of the written tenancy agreement into evidence. However, the parties agreed a month-to-month tenancy began on December 1, 2014. Rent was initially \$1,200.00 per month but was subsequently reduced to \$1,180.00 per month in or about June 2015. At the beginning of the tenancy, the Tenant paid a security deposit of \$600.00.

As noted above, the parties confirmed during the hearing that the Tenant moved out of the rental unit on August 15, 2016. However, the Landlord testified she has not received rent from the tenant since June 1, 2016.

Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 11, 2016 (the "10 Day Notice"). The Tenant's Application confirms the 10 Day Notice was received on July 8, 2016.

In reply, the Tenant acknowledged she has not paid rent as alleged but stated various reasons for this. Specifically, she alleged the Landlord removed the front door of the rental unit, removed appliances and took her son's Xbox One, although I make no findings with respect to the reasons rent was withheld.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Section 26(1) of the *Act* states:

"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 the *Act* to deduct all or a portion of the rent."

The Tenant conceded rent has not been paid as described by the Landlord. Although served with the 10 Day Notice on July 8, 2016, she remained in the rental unit, without paying rent, until August 15, 2016. Accordingly, I award the Landlord \$3,540.00 (3 x \$1,180.00) in unpaid rent for the months of June, July and August 2016.

As the Landlord has been successful, I also award the Landlord \$100.00 as recovery of the filing fee.

I find the Landlord has established a total monetary claim of \$3,640.00, consisting of \$3,540.00 for unpaid rent and \$100.00 for recovery of the filing fee. I order that the Landlord may apply the security deposit of \$600.00 in partial satisfaction of the claim, bringing the amount owing by the Tenant to \$3,040.00.

Conclusion

Pursuant to section 67 of the *Act*, the Landlord is granted a monetary order in the amount of \$3,040.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: September 16, 2016

Residential Tenancy Branch