Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   Landlord: OPR OPC MND MNR MNSD FF
                           Tenant: CNC OLC PSF RR O CNR

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 for Dispute Resolution was received by the Residential Tenancy Branch on August 10, 2016 (the "Landlord's Application"). The Landlord applied for the following relief pursuant to the *Act*:

- an order of possession based on a 10 Day Notice for Unpaid Rent or Utilities, dated August 8, 2016 (the "10 Day Notice");
- an order of possession based on a 1 Month Notice to End Tenancy for Cause, dated July 31, 2016 (the "1 Month Notice");
- a monetary order for damage to the unit, site or property;
- a monetary order for unpaid rent or utilities;
- an order permitting the Landlord to keep all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant's Application for Dispute Resolution was received at the Residential Tenancy Branch on August 8, 2016, and was amended on August 11, 2016 (the "Tenant's Application"). The Tenant applied for the following relief pursuant to the *Act*:

- an order cancelling the 10 Day Notice;
- an order cancelling the 1 Month Notice;
- a monetary order for money owed or compensation for damage or loss;
- an order compelling the Landlord to provide services or facilities required by law;

- an order permitting the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and
- other unspecified relief.

The Landlord attended the hearing on her own behalf, but was assisted by her son, R.K., due to language issues. The Tenant did not attend the hearing.

On behalf of the Landlord, R.K. testified the Notice of a Dispute Resolution Hearing and supporting evidence was served on the Tenant, in person, on August 11, 2016. I find these documents were received by the Tenant on that date.

The Landlord was provided with the opportunity to present 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 Landlord applied for a monetary order for damage to the unit, site or property. However, the Landlord's oral testimony was that the Tenant continues to occupy the rental unit. Accordingly, I find the Landlord's application for a monetary order for damage to the unit, site or property is premature. Accordingly, this aspect of the Landlord's claim is dismissed with leave to reapply at a later date and will not be considered further in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an order of possession based on the 1 Month Notice or the 10 Day Notice?
2. Is the Landlord entitled to an order granting recovery the filing fee?
3. Is the Landlord entitled to keep all or part of the security deposit?

Background and Evidence

On behalf of the Landlord, R.K. testified that the month-to-month tenancy began on July 2, 2015. At all material times, rent of $550.00 has been due and payable on the second day of each month. At the beginning of the tenancy, the Tenant paid a security deposit of $275.00 to the Landlord.

R.K. advised the Landlord issued the 1 Month Notice due to issues with the Tenant's behaviour when drinking alcohol. The 1 Month Notice was served on the Tenant, in person, on July 31, 2016.

Subsequently, the Landlord subsequently issued the 10 Day Notice, which was served on the Tenant, in person, on August 8, 2016. The 10 Day Notice was issued for unpaid rent for the month of August 2016. However, R.K. confirmed that rent was paid in full four days after the 10 Day Notice was received by the Tenant.

In the Tenant's Application, the Tenant disputed the notices to end tenancy and sought other relief pursuant to the *Act*. However, the Tenant did not attend the hearing.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

The Tenant did not attend the hearing. The Landlord did attend the hearing and was ready to proceed. Accordingly, the Tenant's Application is dismissed in its entirety without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed, section 55 of the *Act* requires that I issue an order of possession in favour of the landlord if the notice complies with section 52 of the *Act*. Having reviewed the 1 Month Notice and the 10 Day Notice, I find both comply with section 52 of the *Act*. Accordingly, by operation of section 55 of the *Act*, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

The Landlord's request for a monetary order for unpaid rent or utilities is dismissed in light of the Landlord's evidence that rent was paid in full within four days after the Tenant received the 10 Day Notice, in accordance with section 46 of the *Act*.

As the Landlord has been successful, I award her $100.00 in recovery of the filing fee, which I order may be deducted from the security deposit.

Conclusion

The Tenant's Application is dismissed, without leave to reapply.

By operation of section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

Further, I award the Landlord $100.00 as recovery of the filing fee, which I order may be deducted from the security deposit.

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 28, 2016

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Residential Tenancy Branch