



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LAT, LRE, MNDC, OLC (Tenant's Application)
FF, MNDC, MNR, OPC, OPR (Landlords' Application)

Introduction

This hearing convened as a result of cross applications.

In the Tenant's Application for Dispute Resolution filed November 9, 2016 the Tenant sought an Order cancelling a Notice to End Tenancy for Cause, an Order authorizing the Tenant to change the locks on the rental unit, an Order restricting the Landlords' right to enter the rental unit, an Order that the Landlord comply with the *Residential Tenancy Act*, the Regulation or the Tenancy Agreement and monetary compensation in the amount of \$5,000.00.

By Amendment to an Application for Dispute Resolution, dated November 28, 2016, the Tenant also sought an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on October 21, 2016 (the "Notice").

In her materials filed November 28, 2016, the Tenant also included a Monetary Order Worksheet (#RTB-37) wherein she attempted to increase her monetary claim to \$16,600.00, including losses not recoverable under the *Residential Tenancy Act*, such as a claim for \$10,000.00 for compensation for alleged harassment and slander.

In the Landlord's Application for Dispute Resolution, filed on November 30, 2016, the Landlords sought an Order of Possession based on the Notice, as well as a 1 Month Notice to End Tenancy for Cause, a Monetary Order for unpaid rent and to recover the filing fee.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Claims made by the Parties

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice, and the continuation of this tenancy is not sufficiently related to the Tenant's monetary claim. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

Further, and as noted during the hearing, the Monetary Order Worksheet filed by the Tenant on November 28, 2016 does not have the effect of amending her Application for Dispute Resolution and in particular her monetary claim from \$5,000.00 to the sum of \$16,600.00. As well, some of the monetary compensation sought by the Tenant is not recoverable under the *Residential Tenancy Act*. For these reasons, I exercise my discretion to dismiss with leave to reapply, the Tenant's monetary claim.

Additionally, the Tenant's claim for an order that the an Order authorizing the Tenant to change the locks on the rental unit, an Order restricting the Landlords' right to enter the rental unit, an Order that the Landlord comply with the *Residential Tenancy Act*, are dismissed for reasons which will be evident in this my Decision.

I find the Landlord's monetary claim for unpaid rent to be sufficiently related to the 10 day Notice, and accordingly I will address that claim.

Preliminary Matter—Order of Possession

S.A., agent for the Landlord, stated that to her knowledge the Tenant was still in occupation of the rental unit.

During the hearing the Tenant advised she had moved from the rental unit the "week before the hearing". She was not able to be specific as to the date this occurred, although she claimed she had removed all of her belongings.

S.A. confirmed that although the Tenant claimed to have given up possession of the rental unit, the Landlord requested an Order of Possession.

The evidence before me confirms that the Tenant failed to apply to dispute the 1 Month notice to End Tenancy for Cause issued on November 1, 2016. Pursuant to sections 47(5) and 55(2)(b) of the *Residential Tenancy Act*, I grant the Landlord an Order of Possession. This Order may be filed and enforced in the B.C. Supreme Court.

Issues to be Decided

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

Background and Evidence

Introduced in evidence was a copy of the Residential Tenancy Agreement provided that this short term tenancy (2 Months less 7 days) was to begin on October 7, 2016 and end November 30, 2016. The Agreement provided that the tenancy may continue on a month to month basis following the expiration of the fixed term. Monthly rent was payable in the amount of \$1,200.00 payable on the 1st of the month. The Tenant was not required to pay a security deposit.

Notably, the copies of the Residential Tenancy Agreement submitted in evidence by the parties were not identical; namely, the copy submitted by the Tenant indicated the Tenant had paid a security deposit of \$600.00 while the copy submitted by the Landlord indicated no such payment was made. Further, the copy submitted by the Tenant was not signed by the Tenant, whereas the copy submitted by the Landlord was. As the return of the security deposit is not before me, it is not necessary that I make a finding as to the authenticity of these documents; however, the parties were cautioned that it is an offence to knowingly attempt to mislead an administrative tribunal.

S.A. testified that the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities indicating that the sum of \$700.00 was due on October 14, 2016.

S.A. testified that the Tenant paid \$500.00 on October 26, 2016 leaving a balance of \$700.00 owing for October 2016. A copy of the email transfer was submitted in evidence by the Tenant, which included a message from the Landlord as follows:

"Rent is \$1200 plus you owe late fees, you still owe over \$700 dollars."

Please do not reply to this email."

S.A. testified that the Tenant also failed to pay rent for November 2016.

S.A. testified that the Landlords were not aware the Tenant had vacated the rental unit and as such also seek loss of rent for December 2016.

The Tenant testified that she paid \$700.00 in cash on October 24, 2016 and then sent a further \$500.00 to the Landlord's by electronic transfer. The Tenant's bank statements confirm a cash withdrawal on October 24, 2016 as well as an electronic transfer made October 26, 2016 as well a

The Tenant also testified that she gave the Landlords \$1,000.00 for the November 2016 rent after withdrawing it from her bank account. The Tenant's bank statements confirm \$1,000.00 withdrawal on October 31, 2016. The Tenant stated that she paid the Landlord \$1,000.00 in cash as the Landlord, N.M., told her that "e-transfer was down".

The Tenant confirmed that she did not pay rent for December 2016.

The Landlord, N.M. also testified on behalf of the Landlords and replied to the Tenant's submissions. He stated that the Tenant did not pay \$700.00 in cash on October 24, 2016. N.M. further stated that the Tenant did not pay \$1,000.00 on or about October 31, 2016. He confirmed that the only sum of money they received from the Tenant was an e-transfer on October 26, 2016.

Analysis

I find, based on the testimony and evidence before me and on a balance of probabilities as follows.

The Landlord claims unpaid rent for October, November and December 2016.

October 2016 Rent

As indicated earlier in this my Decision, the Notice was issued on October 21, 2016 indicating the sum of \$700.00 was owing as of October 14, 2016. During the hearing, the Landlord's agent testified that the date of October 14, 2016 was an error and that the Notice should have read October 1, 2016. No such clarification was made with respect to the amount owing.

As the amount owing on the Notice was \$700.00, this suggests a payment of \$500.00 was received by the Landlord *prior to October 21, 2016*, the date the Notice was issued.

The Tenant's bank statements confirm a withdrawal of \$600 was made on October 4, 2016 as well as a withdrawal of \$550.00 on October 16, 2016.

The \$500.00 electronic transfer sent by the Tenant to the Landlord, as evidenced by her bank records, confirm these funds were transferred on October 26, 2016. Documentary evidence confirms these funds were accepted by the Landlord on October 28, 2016.

As the October 26, 2016 electronic transfer had not been received by October 21, 2016, the payment of \$500.00 on October 26, 2016, received October 28, 2016 should have reduced the balance owing for October 2016 to \$200.00. Yet, the Notice indicates that at that time the Landlord claimed \$700.00 was outstanding.

Based on the documentary evidence before me, and in particular, the amount claimed on the Notice as well as the October 26, 2016 electronic transfer, I find that the amount owing for October 2016 is **\$200.00**.

November 2016 Rent

The Tenant claimed she paid \$1,000.00 in cash to the Landlord towards her November 2016 rent. The Tenant's bank records indicate a withdrawal of \$1,000.00 on October 31, 2016. When I asked the Tenant *when* she withdrew the November payment she could not provide that information. Further, when I asked her *when* she paid the Landlord, she again could not provide that information only to say that she brought it to the Landlord personally.

The Landlord denies receiving any payment towards the November 2016 rent.

The documentary evidence provided by the Tenant suggests that her interactions with the Landlord had significantly deteriorated by late October 2016. I find it very unlikely that the Tenant would have personally paid the Landlord \$1,000.00 in cash on October 31, 2016, not only based on their negative interactions, but the fact the Landlord issued the Notice *after* the Tenant claims to have paid a portion of her October 2016 rent in cash.

Accordingly, I find that the Tenant failed to pay the November 2016 rent and I award the Landlord the sum of **\$1,200.00**.

December 2016 Rent

The Tenant testified that she did not pay her December 2016 rent. She was not able to confirm the date she moved out in December 2016, only to say it was “sometime last week”. As the hearing occurred on December 22, 2016, she was clearly in occupation of the rental unit during the month of December, 2016. Accordingly, I award the Landlord **\$1,200.00** representing the loss of rent for December.

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

In sum, I find that the Landlord has established a total monetary claim of **\$2,600.00** comprised of outstanding rent in the amount of **\$200.00** for October 2016, **\$1,200.00** for November 2016, **\$1,200.00** for December 2016 and the **\$100.00** filing fee paid by the Landlord for this application. I grant the Landlord an order under section 67 for the balance due of **\$2,600.00**. This Monetary Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The Tenant’s monetary claim is dismissed with leave to reapply. As the tenancy has ended, the balance of the Tenant’s claim is dismissed.

The Landlord is granted an Order of Possession and is granted a Monetary Order for the sum of **\$2,600.00**.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: December 23, 2016

Residential Tenancy Branch