



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNR, CNL, FF

For the landlord – OPR, MNR

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel 10 Day Notice to End Tenancy for unpaid rent or utilities; to cancel a Two Month Notice to End Tenancy for landlord's use of the property; and to recover the filing fee from the landlord for the cost of this application. The landlord applied for Order of Possession for unpaid rent or utilities and for a Monetary Order for unpaid rent or utilities.

At the outset of the hearing the landlord advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

The matter was set for a hearing at 11.00 a.m. on this date. The hearing went ahead as scheduled and the landlord dialed into the conference call. The phone line remained open for 10 minutes before the hearing proceeded on the landlord's application; As the the tenant did not dial into the call during the duration of the hearing, I find that the tenant has failed to present the merits of her application and the tenant's application is dismissed without leave to reapply.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served in person to the tenant on October 30, 2016.

The landlord gave sworn testimony and was provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The landlord testified that this tenancy started on May 01, 2016 for a fixed term tenancy that was not due to expire until April 30, 2017. Rent for this unit was \$950.00 per month due on the 1st of each month. A copy of the tenancy agreement has been provided in documentary evidence.

The landlord testified that he received an Order from the city that he had to do work on the electrics in the unit to make them up to code. Due to this the landlord served the tenant with a Two Month Notice to End Tenancy on August 10, 2016 and cited on that notice that the landlord has all necessary permits and approvals required by law to demolish the rental unit or renovate or repair the rental unit in a manner that requires the rental unit be vacant. A copy of the Two Month Notice has been provided in documentary evidence. The Notice has an effective date of October 31, 2016.

The landlord testified that the tenant's rent cheques for August and September went NSF and although the tenant paid the rent again for August on September 11, 2016 the rent for September remains unpaid. The landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent in person on October 05, 2016. The Notice had an effective date of October 13, 2016. The landlord testified that the tenant did not

vacate the rental unit until November 14, 2016 and the landlord did not expect the tenant to pay rent for October due to the Two Month Notice.

The landlord seeks a Monetary Order to recover the unpaid rent for September, 2016 of \$950.00.

Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing and having filed her own application to be heard; therefore, in the absence of any testimony from the tenant, I have carefully considered the landlord's undisputed evidence before me.

With regard to the landlord's claim for unpaid rent; I refer the parties to s. 26 of the *Act* which states:

26. 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.

Although I accept the tenant was served a Two Month Notice to End Tenancy had the tenant attended the hearing that Notice would have been cancelled as this was a fixed term tenancy that could not be legally ended until April 30, 2017.

Even if the Notice had been valid the tenant would only have been entitled to the last month's rent for October, 2016 as compensation and the tenant failed to pay rent for September, 2016. Therefore, I am satisfied from the evidence before me that the tenant failed to pay rent for September, 2016 and the landlord served the tenant with a 10 Day Notice to End Tenancy on October 05, 2016. Consequently, the landlord has established his claim to recover unpaid rent for September, 2016 of \$950.00 and will receive a Monetary Order for this amount pursuant to s. 67 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$950.00. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

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: December 06, 2016

Residential Tenancy Branch