



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR OPC MNR MNDC MNSD FF CNC CNR LRE LAT RR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent and/or cause pursuant to section 55;
- a monetary order for unpaid rent and loss pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46;
- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The parties confirmed service of the application for dispute resolution, including the notice of hearing and evidence on file.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy for unpaid rent and cause, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues

Is the landlord entitled to an order of possession for unpaid rent and/or cause?
Is the landlord entitled to a monetary award for unpaid rent and loss?
Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?
Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The tenancy began on December 1, 2016 with a monthly rent of \$2000.00 payable on the 1st day of each month. The tenants paid a security deposit of \$1000.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified the tenants failed to pay the \$2000.00 rent payable on January 1, 2017. The landlord testified that on January 3, 2017 the tenants were served with the 10 day Notice to End Tenancy for unpaid rent or utilities by posting a copy to the door of the rental premises. The landlord testified that the tenants did not pay the outstanding amount of rent as indicated in the Notice within five days of service of the Notice. The landlord testified the tenants did pay \$1100.00 of the outstanding balance on January 6, 2017 and no further payments have been received since.

The tenant acknowledged receiving the 10 day Notice on January 5, 2017 and that they did not pay the full amount of the arrears indicated, within five days, of receiving the Notice.

The landlord's monetary claim is for outstanding rent in the amount of \$2900.00. The landlord testified that this includes unpaid rent of \$900.00 for January 2017 and \$2000.00 of unpaid rent for February 2017.

The tenant testified that she had an oral agreement with the landlord to vacate the rental unit as the landlord was moving family into the rental unit. The tenant testified

that the landlord agreed her last month's rent would be free and she would be vacating the rental unit on February 15, 2017. The tenant submits she has an audio recording of this agreement but states she was not aware that she was required to submit this recording with her evidence package.

The landlord denied any such agreement and testified that the tenants have not been issued a Notice to End Tenancy on the grounds of landlord's use of property.

Analysis

I am satisfied that the tenants were served with the 10 day Notice to End Tenancy on pursuant to sections 88 & 90 of the Act.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 26 of the Act requires that 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 the tenants filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants application must be dismissed as the tenant's acknowledged rent was not paid in full within 5 days after receiving the notice nor did the tenants have a right under this Act to deduct all or a portion of the rent. The tenant's argument that she had an oral agreement to vacate the rental unit in exchange for 1 month's free rent is dismissed. The tenant did not submit any evidence in support of this alleged oral agreement. In either event, the requirement for a landlord to provide one month's free rent is not triggered until a landlord issues a Notice to End Tenancy for Landlord's Use of Property in the approved form as required under the Act.

Section 55(1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the Act.

I find that the Notice issued on January 3, 2017 complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

I find that the tenants were obligated to pay monthly rent in the amount of \$2000.00 but failed to pay rent in the amount of \$900.00 for January 2017 and \$2000.00 for February 2017. I accept the landlord's claim for outstanding rent of \$2900.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$3000.00.

The landlord continues to hold a security deposit of \$1000.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$2000.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2000.00. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced 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: February 08, 2017

Residential Tenancy Branch