



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNDC DRI CNR MNSD ERP FF

Introduction

This hearing dealt with applications by the landlord and the tenant. The landlord applied for an order of possession pursuant to a notice to end tenancy for unpaid rent and a monetary order for unpaid rent. The tenant applied to cancel the notice to end tenancy for unpaid rent, an order for emergency repairs and monetary compensation including overpayments of rent.

Preliminary Issues

This hearing first convened on February 21, 2017, pursuant to the landlord's application. At that time, the arbitrator was informed that the tenant had also filed an application, which was set to be heard on March 1, 2017, and the tenant and the landlord had submitted evidence for the March 1, 2017 hearing which they had not submitted for the February 21, 2017 hearing. The arbitrator determined that it was appropriate to adjourn the landlord's application and join it to be heard together with the tenant's application on March 1, 2017.

The hearing reconvened before me on March 1, 2017. The landlord and the tenant called in to the teleconference hearing.

I informed the parties that the issue of the notice to end tenancy would take precedence. I heard testimony on that issue as well as the issue of rent. The tenant raised the issue of potential mould in the rental unit, but as mould is generally not considered the subject of an order for emergency repairs, I dismiss that portion of the tenant's application.

I will address the tenant's monetary claim in the conclusion of my decision.

Issue(s) to be Decided

What is the rate of the monthly rent?

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The landlord purchased the property in 2005. At that time the tenant already resided in the rental unit. The parties agreed that in 2005 the landlord agreed to drop the monthly rent from \$800.00 to \$700.00. Over the course of the next 11 years, the landlord verbally informed the tenant of rent increases, which the tenant paid. The tenant paid \$755.00 per month until June 2016, when the landlord asked for \$800.00 per month. The tenant paid that amount until January 2017. The tenant has disputed the last increase of rent.

In the first week of January 2017 the tenant contacted the landlord and stated that she was not going to pay rent and she was filing for dispute resolution. On January 12, 2017 the landlord served the tenant with a notice to end tenancy for unpaid rent. The tenant has made no further payment of rent. The landlord stated that they would be willing to extend the tenancy to March 31, 2107.

Analysis

Based on the agreement of the parties, I find that the monthly rent is \$755.00. The tenant is entitled to recovery of overpayments of rent totalling \$315.00.

The tenant was served with the notice to end tenancy and failed to pay the rent owed within the five days granted under section 46(4) of the Act. The tenant had no authority to withhold the rent. The landlord is therefore entitled to an order of possession effective March 31, 2017.

As for outstanding rent, I find that the landlord is entitled to rent of \$755.00 per month for January, February and March 2017, less the tenant's overpayment of \$315.00.

As the tenant's application to dispute a rent increase and the landlord's application were both successful, I find that neither party is entitled to recovery of their filing fee.

Conclusion

The landlord's application is mostly successful.

I grant the landlord an order of possession effective March 31, 2017. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I grant the landlord an order under section 67 for the balance due of \$1,950.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The portion of the tenant's application regarding monetary compensation is dismissed with leave to reapply.

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: March 1, 2017

Residential Tenancy Branch

