

DECISION

Dispute Codes LANDLORDS: OPR, MNR, FF
TENANT: CNR, CNC, O

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenant.

The Landlords filed seeking an Order of Possession, for compensation for unpaid rent and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notices to End Tenancy and for other considerations.

Service of the hearing documents by the Landlords to the Tenant were done by registered mail on April 28, 2017 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlords were done by personal delivery on April 24, 2017 in accordance with section 89 of the Act.

Both parties confirmed receiving the other parties hearing package.

Issues to be Decided

Landlord:

1. Are the Landlords entitled to an Order of Possession?
2. Is there unpaid rent and are the Landlords entitled to compensation for the unpaid rent?

Tenant:

1. Is the Tenant entitled to an Order to cancel the Notices to End Tenancy?
2. What other considerations are there?

Background and Evidence

This tenancy started on October 1, 2014 as a month to month basis. Rent is \$1,200.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$600.00 and then made an agreement in writing with the Landlord to apply the security deposit of \$600.00 to the September, 2016 rent payment.

During the start of the hearing both the Landlord and the Tenant agreed there was unpaid rent for April, 2017 in the amount of \$1,200.00 and for May, 2017 in the amount of \$1,200.00. The Tenant said she was told by Service BC and the Residential Tenancy Branch not to pay the rent until the hearing was completed. The Arbitrator told the Tenant this information was incorrect and Section 26 of the Act says a tenant must pay the rent when it is due whether the landlord complies with the Act, regulations or tenancy agreement.

Further the Tenant said that she amended her application because of a number of issues with the Landlord and the Tenant wanted to discuss compensation for the losses or damages due to these issues. The Tenant's amended application has no monetary claim on it. The Tenant said she believed that because of the Landlord's actions she should not have to pay rent for April and May, 2017, The Tenant said she was willing to move out April 30, 2017 but the Landlord parked a boat and trailer in the driveway so she could not move her things out of the rental unit. The Tenant said she may made a new application for compensation for loss or damage.

The Landlords said the area they parked their boat and trailer in is a common area and they would have move both units if the Tenant had asked them. The Landlords said moving the units would not have been a problem because they wanted to end the tenancy as soon as possible. The male Landlord said they just want to end the tenancy as they want to sell the unit. The male Landlord said they will for go the May, 2017 rent of \$1,200.00 if the Tenant agrees to move out by May 31, 2017. The Landlords requested and Order of Possession effective May 31, 2017 and a monetary order for the April, 2017 rent of \$1,200.00 and the filing fee of \$100.00.

The Tenant said she would move out by May 31, 2017, but she believes that she should not have to pay the April or May, 2017 rent.

The Landlord asked if they could enter the property with a 72 hour Notice for a realtor to show the unit.

The Tenant said she did not want anyone coming into the unit while she is still there.

Analysis

Section 26(1) says 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.

The Tenant does not have the right to withhold all or a portion of the rent from the Landlord when it is due therefore; I find the Tenant has unpaid rent and the Tenant has not established grounds to be granted an order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated April 12, 2017. The Landlord's 10 Day Notice to End Tenancy dated April 12, 2017 stands in effect. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect at 1:00 p.m. May 31, 2017.

As well both parties agree the April and May, 2017 rent has not been paid, but as the Landlords have only asked for the April, 2017 rent of \$1,200.00; I award the Landlords \$1,200.00 for the April, 2017 rent and the \$100.00 filing fee as the Landlords have been successful in this matter.

Further I order the Landlord not to enter the rental unit unless agreed to by the Tenant or in the case of an emergency.

Conclusion

The Tenant's application to cancel the 10 Day Notice to End Tenancy for unpaid rent is dismissed without leave to reapply.

An Order of Possession effective May 31, 2017 and a Monetary Order in the amount of \$1,300.00 have been issued to the Landlords. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: May 25, 2017.

Residential Tenancy Branch