



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR

Landlords: OPRM-DR/FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

On May 7, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to cancel a 10-day Notice to End Tenancy for unpaid rent, dated May 2, 2018.

On May 9, 2018, the Landlords submitted an Application for Dispute Resolution by Direct Request under the Act. The Landlords requested an Order of Possession for unpaid rent, a Monetary Order to recover the unpaid rent, and to be compensated for the cost of the Filing Fee. The Landlords’ Application was crossed with the Tenant’s Application and the matter was set for a participatory hearing via conference call.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Tenant:

Should the 10-day Notice to End Tenancy for unpaid rent, dated May 2, 2018, (the "Notice") be canceled?

Landlords:

If the Notice is valid, has the Tenant breached the Act or Tenancy Agreement, entitling the Landlords to receive an Order of Possession?

Should the Landlords receive a Monetary Order for unpaid rent?

Should the Landlords receive reimbursement for the Filing Fee?

Background and Evidence

The Tenant and the Landlords agreed to the following:

The month-to-month tenancy began on November 1, 2017. The monthly rent of \$2,350.00, was due on the last day of the preceeding month. The Landlords collected and currently hold a \$1,175.00 security deposit.

The Tenant is currently in arrears for \$5,750.00 in unpaid rent. The Tenant has not paid the balance of the April 2018 rent for \$1,050.00, the May 2018 rent for \$2,350.00 or the June 2018 rent, for \$2,350.00.

The Landlords served, and the Tenant received, the Notice on May 2, 2018.

Landlords' Evidence:

Landlord JH spoke for the Landlords and testified that the Tenant has been struggling to pay rent on time since the beginning of the tenancy and recently has been dealing with some deaths in her family.

Landlord JH acknowledged that it has been very difficult to pay their mortgage without the rent payments. The Landlords request an Order of Possession and to be compensated for the unpaid rent.

Tenant's Evidence:

The Tenant stated that she did not submit any evidence with her Application.

The Tenant testified that she originally asked the Landlords for the Notice; however, later applied to cancel it on her lawyer's advice. She stated that it hasn't been easy to deal with the deaths in her family and stated that she has had conversations with the Landlords about settling her family's estate and being able to reimburse the Landlords for the unpaid rent in the near future.

The Tenant stated that she has settled the estate issues and hopes to pay the outstanding rent of \$5,750.00 soon.

The Tenant would like to stay in the rental unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Under Section 26 of the Act, the Tenant could not withhold rent unless she had an Order from the Residential Tenancy Branch allowing her to do so, or, if the Tenant had paid for emergency repairs in accordance with Section 33 of the Act. I find the Tenant had no order, nor did she have any evidence she had paid for emergency repairs. This leads me to find the Tenant had no authority under the Act to withhold rent from the Landlords. I find that the Tenant has not paid all the rent due to the Landlords; therefore, the Notice is valid and should not be cancelled.

Therefore, I dismiss the Application of the Tenant.

The Notice was served on May 2, 2018, therefore making the effective vacancy date May 13, 2018. Having found the Tenant is still living in the rental unit and has failed to pay all rent when due, I find that the Landlords are entitled to an Order of Possession.

I find that the Landlords have established a total monetary claim of \$5,850.00, comprised of \$5,750.00 in unpaid rent and, because the Landlords' Application has merit, the \$100.00 fee paid by the Landlords for this Application.

I order that the Landlords retain the security deposit of \$1,175.00, in partial satisfaction of the claim, and I grant the Landlords an Order under Section 67 for the balance due of \$4,675.00.

Conclusion

I am granting the Landlords an Order of Possession to be effective two days after notice is served on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlords have established a monetary claim, in the amount of \$5,850.00, which includes \$5,750.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlords to keep the Tenant's security deposit of \$1,175.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlords a Monetary Order for the balance of \$4,675.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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: June 19, 2018

Residential Tenancy Branch