



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPC MNR MNSD FF / CNC CNR OLC LRE MT FF

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 cause pursuant to section 55;
- a monetary order for unpaid rent 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 pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to change the locks and/or to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- more time to make an application to cancel the landlord’s Notice to End Tenancy pursuant to section 66;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence.

The tenant confirmed service of the landlord's applications for dispute resolution, including the notice of hearing and evidence on file.

The landlord did not confirm service of the tenant's application and/or evidence. The tenant stated that a friend drove up to Alberta and posted her application on the door of the landlord's residence.

Posting is not a permitted method of service of a tenant's application for dispute resolution pursuant to section 89 of the Act; therefore, I find the landlord was not served with the tenant's application. The tenant's application is dismissed on this ground. In either event, the parties advised that the tenant vacated the rental unit on October 17, 2018 so the tenant's entire application was moot regardless of the service issue. The tenant also did not submit any evidence in response to the landlord's application. The tenant stated that she dropped off an evidence package with at a Service BC office but did not provide details with respect to the date on which this was done. There is no record on file of any evidence submission from the tenant. The landlord also did not receive any evidence submissions from the tenant.

As the tenancy has ended, the only outstanding issues to be determined in this hearing were the landlords' claims for unpaid rent and to retain the security deposit.

Preliminary Issue – Amendment to Landlord's Application

Section 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenant did not vacate the rental unit until October 17, 2018, therefore she asked to amend her claim to include outstanding rent for the period of October 1, 2018 to October 17, 2018. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

Issues

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

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 September 1, 2017 with a monthly rent of \$1600.00 payable on the 1st day of each month. The rent was increased to \$1664.00 effective September 1, 2018. The tenants paid a security deposit and pet deposit totaling \$1600.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified the tenant failed to pay the \$1664.00 rent payable on September 1, 2018 and subsequently paid only \$700.00 around September 11, 2018. The landlord testified that the tenant also did not pay any rent for the period of October 1, 2018 to October 17, 2018. The landlord is claiming a prorated amount of \$912.56 for this period for a total claim of \$1876.56 in unpaid rent.

The tenant acknowledged that only \$700.00 was paid towards September 2018 rent and that no amount was paid for October 2018. The tenant argues that she was misled that the property was selling and that she would receive one month's free rent but then was issued a One Month Notice and a 10 Day Notice for failing to pay rent. The tenant testified that she received a text message from the landlord back in July 2018 offering her one month's free rent. The tenant acknowledged that she was not served any formal Two Month Notice to End Tenancy for Landlord's Use of Property.

The landlord testified that she did send a text to the tenant offering one month's free rent but it was conditional on the tenant paying outstanding rent that was due at that time and agreeing to vacate however she received no response from the tenant until after a 10 Day Notice was served on the tenant for failure to pay the outstanding rent.

Analysis

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.

The tenant was not served with a formal Two Month Notice to End Tenancy nor did the tenant provide sufficient evidence that she was offered one month's free rent. Accordingly, the tenant did not have a right under this Act to deduct all or a portion of the rent payable for September and October 2018.

I find that the tenant was obligated to pay monthly rent in the amount of \$1664.00 but failed to pay this full amount for September 2018 and failed to pay any rent for the prorated portion of October 2018. I accept the landlord's claim for outstanding rent of \$1876.56.

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 \$1976.56.

The landlord continues to hold a security deposit of \$1600.00. 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 \$376.56.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$376.56. 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: October 19, 2018

Residential Tenancy Branch