



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KENDALL PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNR, CNC, MNDC, OLC

Introduction

On July 13, 2018 the Tenant filed an Application for Dispute Resolution in which the Tenant applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent.

On July 26, 2018 the Tenant filed an Amendment to an Application for Dispute Resolution in which the Tenant applied to cancel a One Month Notice to End Tenancy for Cause.

On August 30, 2018 the Tenant filed an Amendment to an Application for Dispute Resolution in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss.

The Tenant stated that the Application for Dispute Resolution and the Notice of Hearing were posted on the Landlord's door, although she cannot recall the date of service. The Agent for the Landlord stated that these documents were received sometime in July of 2018.

On July 13, 2018 the Tenant submitted 2 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was mailed to the Landlord on July 13, 2018. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On September 06, 2018 the Tenant submitted 17 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was mailed to the Landlord on September 06, 2018. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On August 24, 2018 the Landlord submitted 24 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was mailed to the Tenant on August 24, 2018. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed, but is only referenced in this written decision if it is relevant to my decision.

Preliminary Matter

At the outset of the hearing the Occupant requested an adjournment on the basis that the Tenant was undergoing surgery. He requested that the matter be adjourned until December 28, 2018.

The Landlord objected to the adjournment, in part, because the hearing has already been rescheduled to accommodate the Tenant's medical needs.

The Landlord objected to the adjournment, in part, because the Tenant submitted no independent evidence to establish that she is scheduled for surgery today.

The Landlord objected to the adjournment, in part, because the Tenant's rent is in arrears by \$1,900.00 and a further delay would be unfair to the Landlord.

As we were discussing the need for an adjournment the Tenant dialed into the teleconference and stated that she had returned from the hospital and was able to participate in the hearing. As the Tenant was able to participate in the hearing, the application for an adjournment was denied and the matter proceeded as scheduled.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent be set aside?
Should the Notice to End Tenancy for Cause be set aside?
Is the Tenant entitled to recover a \$200.00 move in/move out fee?

Background and Evidence

The Landlord and the Tenant agree that they have a tenancy agreement which declares the tenancy begins on April 30, 2018.

The Landlord and the Tenant agree that rent of \$1,650.00 is due by the first day of each month.

The Landlord and the Tenant agree that the tenancy agreement requires the Tenant to pay a move in/move out fees if the "building in which a tenant is moving in or out of has a bylaw that allows charging a move in or move out fee". The Agent for the Landlord stated that the rental unit is in a building in which the Strata charges move in/move out fees of \$200.00.

The Property Manager stated that the Tenant was provided with a copy of the strata bylaws, which stipulate that a move in/move out fee of \$200.00 is required. The Tenant stated that she was not provided with a copy of the strata bylaws, but she was told she was required to pay move in/move out fees of \$200.00 prior to being "rushed into signing" the tenancy agreement.

The Tenant is seeking to recover the \$200.00 move in/move out fees if "this is not legal"

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, dated July 09, 2018, was personally served to the Tenant on July 09, 2018. The Tenant stated that on July 10, 2018 she found this Notice to End Tenancy posted to her door. The parties agree that this Notice to End Tenancy declared that the Tenant owed \$1,650.00 in rent.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, dated August 02, 2018, was sent to the Tenant, via registered mail, on August 02, 2018. The Tenant stated that on August 02, 2018 she found this Notice to End Tenancy posted to her door. The parties agree that this Notice to End Tenancy declared that the Tenant owed \$3,300.00 in rent.

The Agent for the Landlord stated that a One Month Notice to End Tenancy for Cause, dated July 18, 2018, was sent to the Tenant, via registered mail, on July 18, 2018. The Tenant stated that on July 19, 2018 she found this Notice to End Tenancy posted to her door.

The Tenant stated that she paid \$1,000.00, via e-transfer, on June 18, 2018. She stated that this was payment for rent for June of 2018. The Agent for the Landlord stated that this payment was received on June 18, 2018 and that it was applied to rent for June of 2018.

The Tenant stated that she paid \$875.00 in cash on June 28, 2018. The Agent for the Landlord stated that this payment was received on June 28, 2018. The parties agree that this payment was for the remaining rent for June, in the amount of \$650.00, a move in/move out fee of \$200.00, and a late fee of \$25.00.

The Tenant stated that she paid \$1,400.00, via e-transfer, on August 05, 2018. She stated that this was payment for rent for July of 2018. The Agent for the Landlord stated that this payment was received on August 07, 2018.

The Tenant stated that she paid \$1,650.00, via e-transfer, on August 31, 2018. She stated that this was payment for rent for August of 2018. The Agent for the Landlord stated that this payment was received on September 04, 2018.

The parties agree that no rent was paid for September of 2018.

Analysis

Section 7(1)(f) of the Residential Tenancy Regulation permits a landlord to collect a move-in or move-out fee charged by a strata corporation to the landlord.

On the basis of the testimony of the Agent for the Landlord and in the absence of evidence to the contrary, I find that the rental unit is in a building in which the Strata charges move in/move out fees of \$200.00.

On the basis of the undisputed evidence I find that the Tenant signed a tenancy agreement that requires the Tenant to pay a move in/move out fees if the "building in which a tenant is moving in or out of has a bylaw that allows charging a move in or move out fee".

On the basis of the Tenant's testimony I find that she was aware of the \$200.00 move in/move out fees before she signed the tenancy agreement and that she paid these fees on June 28, 2018.

I therefore find that the Landlord has the right to collect \$200.00 in move in/move out fees and I dismiss the Tenant's application to recover these fees.

Section 26(1) of the *Act* stipulates, in part, that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of the rent. No evidence was submitted to establish that the Tenant had the right to deduct any portion of her rent.

On the basis of the undisputed evidence I find that the Tenant did not pay rent for June, in full, until June 28, 2018.

On the basis of the undisputed evidence I find that the Tenant did not pay any rent for July until early August of 2018, at which time she only paid \$1,400.00. I find that the Tenant's rent for July is in arrears by \$250.00.

On the basis of the undisputed evidence I find that the rent for August has been paid in full.

On the basis of the undisputed evidence I find that rent has not been paid for September of 2018 and that the Tenant's rent is currently in arrears by \$1,900.00.

Section 46(1) of the *Act* authorizes a landlord to end a tenancy if rent is not paid when it is due by serving a Ten Day Notice to End Tenancy for Unpaid Rent.

Regardless of whether the Ten Day Notice to End Tenancy for Unpaid Rent, dated July 09, 2018, was personally served to the Tenant on July 09, 2018, as the Landlord contends, or whether it was posted on the Tenant's door, as the Tenant contends, I am satisfied that she received this Ten Day Notice to End Tenancy for Unpaid Rent. This conclusion was based, in large part, by the Tenant's acknowledgement that she received it on July 10, 2018.

As the Tenant had not paid her rent for July by July 10, 2018, I find that the Landlord had the right, pursuant to section 46(1) of the *Act*, to serve the Tenant with the Ten Day Notice to End Tenancy for Unpaid Rent, dated July 09, 2018.

Section 46(4) of the *Act* stipulates that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect. As there is no evidence that the Tenant paid all of the rent for July within 5 days of receiving the Ten Day Notice to End Tenancy for Unpaid Rent, dated July 09, 2018. I find that this Notice to End Tenancy stands.

As I have determined that the Landlord has satisfied the legislative requirements to end this tenancy pursuant to section 46 of the *Act*, I dismiss the Tenant's application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the application to set aside the Ten Day Notice to End Tenancy has been dismissed and the Notice to End Tenancy complies with section 52 of the *Act*, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

As I have granted the Landlord an Order of Possession on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent, dated July 09, 2018, I find it is not necessary to consider the merits of the Ten Day Notice to End Tenancy for Unpaid Rent, dated August 02, 2018 or the One Month Notice to End Tenancy for Cause, dated July 18, 2018.

Although the merits of the One Month Notice to End Tenancy for Cause were discussed during the hearing, the evidence is not being summarized in this decision as it is not relevant to my decision to grant the Landlord an Order of Possession.

Conclusion

I grant the Landlord an Order of Possession that is effective on **September 30, 2018**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, 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: September 20, 2018

Residential Tenancy Branch