



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

Tenant's application (764389) filed November 8, 2010: CNR; FF

Landlord's application (764395) filed November 10, 2010: OPR, MNR

Introduction

This Hearing was convened to consider cross applications. The Tenant seeks to be allowed more time to file an Application to cancel a Notice to End Tenancy for Unpaid Rent; to cancel the Notice to End Tenancy for Unpaid Rent; and to recover the cost of the filing fee from the Landlords.

The Landlords seek an Order of Possession and a Monetary Order for unpaid rent.

The parties gave affirmed testimony at the Hearing.

Preliminary Matters

The Tenant seeks more time to file her Application. Applications under Section 46(4) of the Act must be filed within 5 days of the Tenant being served with the Notice to End Tenancy. It was determined that the Tenant was personally served with the Notice to End Tenancy on November 3, 2010. Therefore, there is no need to allow the Tenant more time to file her Application as it was filed within the 5 days allowed by the Act.

This portion of her Application is therefore dismissed.

The Tenant's Application identifies the Landlords KM and GP as Respondents. The Landlords' Application identifies the Landlord MRMSI as Applicant. The Tenancy Agreement provided in evidence identifies a different Landlord from the ones identified by the parties. The Landlord's agent BQ testified that the Landlord MRMSI took over management of the rental unit on November 1, 2010 from the Landlord identified on the

Tenancy Agreement. She stated that the Landlord identified as Landlord GP is the owner of the rental property. The Landlord identified as Landlord KM is an agent of the Landlord. The Applications were amended to include all Landlords identified by the Landlord and the Tenant.

Issues to be Decided

- Should the Notice to End Tenancy for Unpaid Rent issued November 2, 2010 be cancelled?
- Are the Landlords entitled to an Order of Possession and a Monetary Order for unpaid rent?

Background and Evidence

The Tenant testified that she moved out of the rental unit 4 or 5 days ago without advising the Landlords. She has not returned the keys to the rental unit.

Monthly rent is \$725.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$362.50 on June 6, 2010. The tenancy started on July 1, 2010, and was a term lease set to expire on June 30, 2010.

The Landlord KM testified that the Tenant made the following rent payments:

July, 2010: paid in full
August, 2010: paid \$750.00, cheque bounced
September, 2010: paid \$1,100.00 in cash
October, 2010: paid nothing
November, 2010: paid \$500.00
December, 2010: paid nothing.

The Tenant agreed with the Landlord's submission, but stated that she had paid \$725.00 cash for the month of October. She stated that the Landlord required cash or certified cheque after her August rent cheque bounced, and told her she could place it in an envelope with her name and rental unit number of in and push it through the Landlord's mail slot. She stated that she paid \$1,100.00 cash in September in that manner and the Landlord provided her with a receipt. The Tenant testified that the October rent money was also paid in cash and deposited in the Landlord's mail slot but was stolen, along with another tenant's rent money.

The Tenant stated that she withheld money from September's rent because she had bedbugs and her furniture was ruined. She stated that the Landlord had assured her that there were no bedbugs in the building when she moved in.

Analysis

Section 26 of the Act states that rent must be paid when it is due under the tenancy agreement unless the Tenant has a right under the Act to deduct all or a portion of the rent. In this particular set of circumstances the Tenant did not have a right under the Act to deduct any rent.

The Tenant has not filed an Application for compensation for damage or loss, and is at liberty to do so.

The Tenant acknowledged that she did not give the Landlords notice that she was moving out. The Tenant filed an Application to cancel the Notice to End tenancy and the Landlords were not at liberty to re-rent the rental unit until the outcome of this Hearing. Therefore, I find the Landlords are entitled to loss of rent for the month of December, 2010.

The Tenant has not returned her keys to the rental unit, and I find that the Landlords are

entitled to an Order of Possession. The Order of Possession is effective 2 days after service of the Order on the Tenant in accordance with the provisions of Section 88 of the Act.

The Tenant has not provided sufficient evidence that her cash rent payment was paid or stolen in October, 2010. The Tenant testified that another tenant's rent payment was also stolen, but that tenant was not produced at the Hearing to give testimony. There was no witness to the fact that she dropped off her rent payment in the Landlords' mail slot.

Based on the testimony and documentary evidence of both parties, I find that the Landlords have established a monetary award, calculated as follows:

Rent due	Amount due	Amount paid	Balance due
August, 2010	\$725.00	(cheque bounced)	\$725.00
September, 2010	\$1,450.00	\$1,100.00	\$350.00
October, 2010	\$1,075.00		\$1,075.00
November, 2010	\$1,800.00	\$500.00	\$1,325.00
December, 2010	2,050.00		\$2,050.00

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During the Hearing, the Landlords asked that they be allowed to apply the security deposit towards their monetary award. Further to the provisions of Section 72 of the Act, the Landlords may retain the security deposit in partial satisfaction of their monetary award.

I hereby provide the Landlords with a Monetary Order in the amount of \$1,687.50 against the Tenant (\$2,050.00 - \$362.50).

Conclusion

The Tenant's application is dismissed in its entirety.

I hereby provide the Landlords with an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlords with a Monetary order against the Tenant in the amount of **\$1,687.50**. This Order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) 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: December 03, 2010.
