

Decision

Dispute Codes: OPR, MNR, MNSD, FF / CNR, MNDC, MNSD, OLC, LRE, FF

Introduction

This hearing was convened in response to 2 applications: i) by the landlord for an order of possession / a monetary order compensation for unpaid rent or utilities / retention of the security deposit / and recovery of the filing fee; ii) by the tenant for cancellation of a notice to end tenancy / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / return of the security deposit / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / an order suspending or setting conditions on the landlord's right to enter the rental unit / and recovery of the filing fee.

The landlord participated in the hearing and gave affirmed testimony. Despite mailing of landlord's application for dispute resolution and notice of hearing (the "hearing package") by way of registered mail, and despite scheduling of the hearing in response to applications by both parties, the tenant did not appear. Evidence submitted by the landlord includes 2 separate sets of Canada Post tracking numbers for registered mailings to the tenant.

Issues to be decided

- Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the term of tenancy is from July 15, 2011 to August 31, 2012. Monthly rent of \$1,700.00 is payable in advance on the first day of each month, and a security deposit of \$850.00 was collected.

The tenant's rent cheque of \$850.00 for the period from July 15 to 31, 2011 was unable to be cashed. Accordingly, the landlord issued a 10 day notice to end tenancy for unpaid rent or utilities dated July 20, 2011. The notice was served by way of posting on the tenant's door on that same date. Subsequently, the tenant made no payment toward rent and vacated the unit on July 28, 2011, without providing a forwarding address. The landlord then found that the tenant's rent cheque of \$1,700.00 for August 2011 was also unable to be cashed. Despite on-line advertising, the landlord has still not presently succeeded in finding new renters.

As the tenant has vacated the unit, the landlord withdrew the application for an order of possession. However, compensation sought by the landlord is as follows:

\$ 850.00: unpaid rent from July 15 to 31, 2011

\$1,700.00: unpaid rent / loss of rental income for August 2011

\$ 50.00: filing fee

Sub-total: \$2,600.00

Further to the above, the landlord seeks to recover costs for painting undertaken in the unit. In this regard, however, the landlord confirmed that it was the tenant who contacted the painter and the tenant who entered into a contract with the painter. The landlord testified that while the painting was completed, the tenant did not pay the painter; compensation owed to the painter is said to be in the total amount of \$2,600.00.

At 2:45 p.m. on August 22, 2011, or more than 1 ¼ hours after the conclusion of today's hearing, an Information Officer from the Residential Tenancy Branch (RTB) delivered to my attention a letter from the tenant. The letter was shown as having been faxed to the RTB at approximately 3:00 p.m. on Friday, August 19, 2011. In her letter the tenant sets out miscellaneous details related to the dispute, confirms that she has "asked for this hearing," and requests an adjournment in order that she can be "fully prepared." Pertinent to the tenant's letter, Rule 6 of the Residential Tenancy Branch Rules of Procedure speaks to "Rescheduling and Adjournment of Dispute Resolution Proceedings." In short, the tenant's request does not comply with the proper procedures and, in any event, the hearing was completed by the time the tenant's request came to my attention. Finally, a copy of what the tenant refers to as a "proof of address change" which she also faxed to the RTB, is unable to be read if it is indeed meant to show her current address.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Residential Tenancy Branch Rules of Procedure, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent or utilities dated July 20, 2011. The tenant did not pay the outstanding rent within 5 days of receiving the notice. Further, while the tenant filed an application to dispute the notice on July 20, 2011, she did not attend the hearing scheduled in response to her

application and the landlord's application, and she did not request an adjournment according to the Residential Tenancy Branch Rules of Procedure. As earlier noted, after service of the 10 day notice, the tenant then vacated the unit without providing the landlord with a forwarding address. Following from all of the above the tenant's application is, therefore, hereby dismissed.

As for the monetary order, I find that the landlord has established a claim of \$2,600.00 as detailed above. I order that the landlord retain the security deposit of \$850.00 and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$1,750.00 (\$2,600.00 - \$850.00).

Following from the fixed term of tenancy agreed to between the parties ending on August 31, 2012, the landlord has the option of filing an application for a monetary order as compensation for additional loss of rental income, depending upon whether / when new renters are found.

As for the painter's compensation, that matter is between the painter and the tenant, and the painter has the option of seeking legal advice concerning the appropriate means for proceeding.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,750.00**. This order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

The tenant's application is hereby dismissed.

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*.

DATE: August 22, 2011

Residential Tenancy Branch