



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords: OPR, OPC, MNR, MND, MNDC, MNSD and FF
Tenant: CNR, CNC, MNDC, OLC, RP and RR

Introduction

This hearing was convened on applications by both the landlord and the tenant.

By application amended September 28, 2012, the landlord sought an Order of Possession pursuant to a one-month Notice to End Tenancy for repeated late payment of rent and breach of a material term served on August 28, 2012 and a 10-day Notice to End Tenancy for unpaid rent served on September 2, 2012. The landlord also sought a Monetary Order for unpaid rent, damage to the rental unit, damage or loss under the legislation or rental agreement, recovery of the filing fee for this proceeding and authorization to retain the security and pet damage deposits in set off against the balance owed.

By application of September 7, 2012, the tenant sought to have both notices set aside, a monetary award for damage or loss under the legislation or rental agreement, orders for landlord compliance and repairs and a rent reduction.

Despite having made application and despite having been served with the Notice of Hearing on the landlord's application, sent by registered mail on September 30, 2012 and received on October 2, 2012, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing.

Therefore, the tenant's application is dismissed without leave to reapply and the hearing proceeded on the landlord's application in the absence of the tenant.

As a matter of note, this tenancy has been the subject of three recent proceedings. An application by the landlord under a direct request proceeding – an application on written

submissions only on routine unpaid rent matters – resulted in the issuance of an Order of Possession and a Monetary Order for unpaid rent on August 2, 2012.

The tenant subsequently applied for and was granted a Review Hearing by a decision of August 23, 2012 on the grounds that the terms of an agreed upon rent abatement required further clarification.

The Review Hearing was conducted on September 26, 2012 and in her decision of that date, the Dispute Resolution Officer found that – despite a discrepancy as to amount – the landlord reinstated the tenancy by having accepted a partial rent payment without issuing a receipt stating that it was accepted for “use and occupancy” only. The Officer deferred the question as to the amounts of rent abatement to the present hearing.

The Notices to End Tenancy of August 28, 2012 (one-month) and September 2, 2012 (10-day) which are the primary issues in the present hearing were not considered during the previous hearings.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession on either of the notices and to a monetary award as requested? Was there an agreement for rent abatement and in what amount?

Background and Evidence

This tenancy began on March 23, 2012. Rent was set at \$1,800 per month and the landlord holds security and pet damage deposits of \$900 and \$450 respectively which were paid on March 21, 2012. The rental unit is the upper portion of a rental building in which there is a basement suite.

During hearing, the landlord gave evidence that , as renovation work was being done in the basement suite, she had granted the tenant a rent reduction of \$200 per month from May 2012 to September 2012 inclusive. She stated that and had permitted one-time reductions of \$350 for loss of utilities for one week and \$200 for loss of use of laundry facilities resulting from the renovation.

The landlord also assumed responsibility for payment of utilities from April to July 2012 from the tenant in further compensation for the inconvenience to the tenant resulting from the renovations and use of power by the contractors doing the work.

The landlord stated that she had served the 10-day Notice to End Tenancy of September 2, 2012 when the tenant had not paid the rent due on September 1, 2012 and had a rent shortfall of \$1,300 to the end of August 2012. In the interim, the landlord stated that the September 2012 rent remains unpaid and the tenant has paid no rent for October 2012.

The landlord has also submitted claims in damage to the rental unit, but I cannot consider those until the tenancy has ended as the tenant still has the opportunity to remedy them and the landlord has had an opportunity to fully assess the condition of the rental unit. The landlord may make a further application for damage to the rental unit at the appropriate time.

As to the monetary claim, the landlord stated that \$1,800 rent had been paid as required for each of April and May 2012. As noted the landlord subsequently gave the tenant a \$200 credit for May on the five-month offer of rent reduction.

The tenant paid no rent in June 2012, but made a payment of \$1,900 in late July 2012, of which \$1,600 covered the July rent and \$300 of which was applied to June, leaving a shortfall of \$1,300 for June, less the \$350 and \$200 relief granted for the temporary loss of utilities and laundry.

The tenant paid no rent for August, September and October.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due, "...whether or not the landlord complies with this Act, the regulations or the tenancy agreement."

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, while the tenant did make application to contest the notice, I find as fact that the tenant did not pay the rent within five days of receiving the notice.

Therefore, I find that the Notice to End Tenancy of September 2, 2012 is lawful and valid and that landlord is entitled to an Order of Possession to take effect two days from service of it on the tenant.

As the tenancy is ending on the 10-day notice for unpaid rent, I find it is not necessary to canvass the landlord's substantial evidence in support of the notice for repeated late payment of rent.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent, recovery of the filing fee for this proceeding and, as empowered by section 72 of the *Act*, I authorize the landlord to retain the security deposit and pet damage deposits in set off against the unpaid rent.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

Rent due to landlord		
Rent for August 2012	1,600.00	
Rent for September 2012	1,600.00	
Rent/loss of rent for October 2012	1,800.00	
Filing fee	<u>100.00</u>	
Sub total	\$6,700.00	\$6,700.00
Tenant's credits		
Rent rebate for May 2012	\$ 200.00	
July overpayment	300.00	
Credit for interruption of utilities	350.00	
Credit for interruption of laundry	200.00	
Security deposit	900.00	
Pet damage deposit	<u>450.00</u>	
Sub total	\$2,400.00	- 2,400.00
TOTAL balance owed by tenant to landlord		\$4,300.00

After credits agreed to by the landlord, with filing fee, security and pet damage deposits and a Monetary Order for \$4,300.00, total award to the landlord is \$5,650.00.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenant.

In addition to authorization to retain the security and pet damage deposits in set off, the landlord's copy of this decision is also accompanied by a Monetary Order for \$4,300.00, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlord remains at liberty to make a further application for damage to the rental unit as ascertained at the conclusion of the tenancy.

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 11, 2012.

Residential Tenancy Branch