Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant's application filed August 19, 2013: CNR, FF

Landlord's application filed August 23, 2013: OPR, MNR, MNDC, FF

Introduction

This matter was convened to consider cross-applications. The Tenant's application is to cancel a Notice to End Tenancy for Unpaid Rent and to recover the cost of the filing fee from the Landlord.

The Landlord's application is for an Order of Possession; a Monetary Order for unpaid rent; compensation for damage or loss under the Act regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

It was determined that each of the parties served the other with their Notice of Hearing documents and copies of their documentary evidence.

Preliminary Matter

At the outset of the Hearing, the parties submitted that the Tenant has moved out of the rental unit and the Landlord has taken back possession. Therefore, the Landlord's application for an Order of Possession is dismissed and the Tenant's application is dismissed in its entirety. The Hearing continued with respect to the Landlord's request for a Monetary Order for unpaid rent; compensation for damage or loss under the Act regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant.

Issues to be Decided

- Is the Landlord entitled to unpaid rent for the month of August, 2013 and compensation for loss of revenue for the month of September, 2013?

Background and Evidence

The Landlord gave the following testimony:

This tenancy was to begin on July 1, 2013. The rental unit was under renovation and the Tenant asked to move in earlier. The Landlord reluctantly agreed to allow the Tenant to move in earlier on the understanding that the renovations may not be finished. The Tenant started moving in on June 29, 2013.

Monthly rent was $1,200.00. The Tenant did not pay a security deposit. The Tenant gave the Landlord $1,200.00 for July's rent on June 26, 2013.

The Landlord took back possession of the rental unit on September 2, 2013 and was able to re-rent it or October 1, 2013.

The Tenant paid only $600.00 towards rent for August, 2013. The Landlord issued a Notice to End Tenancy for Unpaid Rent and gave it to the Tenant on August 16, 2013.

The Landlord seeks a monetary award for unpaid rent for August in the amount of $600.00 and loss of revenue for September, 2013, in the amount of $1,200.00.

The Tenant gave the following testimony:

The parties agreed in April, 2013, that the Tenant would move into the rental unit a few days early. The Tenant paid July's rent in mid-June and got a receipt on June 26, 2013.

The Tenant was moving from another city. The Landlord told the Tenant that the rental unit would be ready to occupy, but it was not and the Tenant was upset. When the Tenant arrived on June 29, 2013, people were still painting the rental unit and the living room floor was bare concrete. The Tenant and her moving crew had to sleep at a friend's house and the moving van could not be unpacked.   The Tenant had to take a couple of extra unpaid days off before she could start her new job, which did not look good to her new employer.

The Tenant had already paid rent for July so the Landlord said he would waive rent for August because the rental unit was not ready.

The rental unit was not ready to be occupied until 10:00 p.m. on July 1, 2013.

The Tenant gave the Landlord $600.00 for August rent because the Landlord had lost his job and she felt sorry for him.

The Tenant moved out of the rental unit at the end of August, 2013.

The Landlord gave the following response:

The Tenant was in the process of moving out until September 2, 2013.

The Landlord did not waive the rent for August, 2013.

The rental unit was ready for occupancy early in the evening of July 1, 2013.

Analysis

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

There is no agreement in writing with respect to the payment of rent. However, the parties agreed that rent was $1,200.00 per month. Likewise, there is no agreement in writing with respect to waiving the payment of rent for the month of August. I find it most probable that the Landlord did not waive rent payment for the month of August. The parties disagreed with respect to the hour that the rental unit was ready for occupancy, but both parties agreed that it was ready on July 1, 2013. Whether there was a verbal agreement that the Tenant could move in before July 1st or not, I find it unlikely that a landlord would compensate a tenant in the equivalent amount of one month's rent when the rental unit was ready on July 1, 2013. Therefore, I find that the Landlord is entitled to unpaid rent in the amount of $600.00 for August, 2013.

I accept that the Landlord served the Tenant with the Notice to End Tenancy by handing the Notice to the Tenant on August 16, 2013. The Tenant did not agree that she owed rent, so she filed for dispute resolution within 5 days of receiving the Notice. In a case like this a Landlord cannot begin to look for another tenant until the tenant's application had been heard or the tenancy ends. I find that the tenancy ended when the Tenant moved out of the rental unit and that the Landlord is entitled to loss of revenue in the amount of $1,200.00 for the month of September, 2013.

The Landlord has been successful in his application and I find that he is entitled to recover the cost of the $50.00 filing fee from the Tenant.

Conclusion

I hereby provide the Landlord a Monetary Order in the amount of **$1,850.00** for service upon the Tenant. This Order 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: October 02, 2013

_____
Residential Tenancy Branch