



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL COLONIAL C/O
GATEWAY PROPERTY MANAGEMENT CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LANDLORD: OPR, MNR, FF
TENANT: CNR

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notice to End Tenancy.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on August 15, 2013 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by registered mail on August 8, 2013 in accordance with section 89 of the Act.

Both parties confirmed the receipt of the other parties' hearing package.

At the start of the conference call the Tenant said she had moved out of the rental unit on August 15, 2013 so she no longer needed the Notice to End Tenancy to be cancelled. Consequently, I dismiss the Tenant's application to cancel the Notice to End Tenancy dated August 2, 2013.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?

Background and Evidence

This tenancy started on September 1, 2010 as a fixed term tenancy with an expiry date of November 30, 2011 and then continued on a month to month basis. Rent is \$835.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$402.50 on July 16, 2010.

During the start of the hearing the Tenant said she has moved out of the rental unit as of August 15, 2013 as the conditions in the rental unit were poor and she was having health issues as a result. The Tenant said he was unable to pay the unpaid rent of \$61.00 for July, 2013 and \$835.00 for August, 2013.

The Landlord said that the Tenant did not pay rent of \$61.00 for the month of July, 2013, when it was due and as a result, on August 2, 2013, he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated August 2, 2013 on the door of the Tenant's rental unit. The Landlord continued to say the Tenant has not paid the rent for August, 2013 in the amount of \$835.00 and he requested an Order of Possession and monetary order for the unpaid rent for as soon as possible.

The Landlord also said he is seeking to recover the \$50.00 filing fee for this proceeding and the registered mail costs in the amount of \$12.00. The Landlord said his total claim is for \$896.00 in unpaid rent, the \$50.00 filing fee and mailing costs or \$12.00 for a total claim of \$958.00.

The Tenant said she has not paid the full rent for July and August, 2013 and she is unable to pay it at the present time, but she would like to work out a payment arrangement with the Landlord. The Landlord said he would talk to the Tenant about working something out with her.

Analysis

Section 26 (1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent

I find that the Tenant has not paid the overdue rent and the Tenant does not have the right to withhold a part or all of the unpaid rent. The Tenant's application to dispute the Notice to End Tenancy has been dismissed as the Tenant said she has already moved out of the rental unit. Consequently, I find for the Landlord and award the Landlord an Order of Possession and a Monetary Order for unpaid rent.

As the Landlord requested an Order of Possession for his records, I find pursuant to s. 55 of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent for the month of July, 2013 in the amount of \$61.00 and for the month of August, 2013 in the amount of \$835.00.

The Landlord also applied for mailing costs of \$12.00, but these costs are not considered part of the tenancy agreement therefore mailing costs are an ineligible claim.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$ 896.00	
Recover filing fee	\$ 50.00	
Subtotal:		\$ 946.00
 Balance Owing		 \$ 946.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$946.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenant's application is dismissed without leave to reapply.

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 16, 2013

Residential Tenancy Branch

