



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord stated that he personally served copies of the Application for Dispute Resolution and Notice of Hearing to the Tenant on August 10, 2011. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent and/or loss of revenue; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord stated that this tenancy began on February 15, 2011; that the Tenant is required to pay monthly rent of \$545.00 on the first day of each month; that the Tenant paid a security deposit of \$272.50; that the parties entered into a mutual agreement to end the tenancy on August 30, 2011; that the Tenant still owes \$445.00 in rent for August of 2011; that he personally served the Tenant with a Ten Day Notice to End Tenancy on August 03, 2011; that on September 06, 2011 the Tenant's daughter returned one key to the rental unit and advised him that the unit had been vacated; and that the Tenant has not yet returned all of the keys to the rental unit.

The Landlord is seeking compensation for unpaid rent and compensation for loss of revenue from September of 2011. The Landlord stated that he has a new tenant who

intended to move into the rental unit on September 01, 2011; that the new tenant was unable to move into the rental unit on September 01, 2011 as it had not been fully vacated by the Tenant; that the new tenant was unable to move into the rental unit on September 07, 2011 because all the keys to the rental unit have not yet been returned; that the new tenant was unable to move into the rental unit on September 07, 2011 because the Landlord has not yet obtained an Order of Possession and he does not believe he has the right to enter the unit for the purposes of inspecting and cleaning it.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$545.00 on the first day of each month and that the Tenant did not pay \$445.00 in rent that was due on August 01, 2011. As she was required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$445.00 in outstanding rent to the Landlord.

When rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that on August 03, 2011 the Tenant was personally served with a Ten Day Notice to End Tenancy for Unpaid Rent that directed the Tenant to vacate the rental unit by August 13, 2011, pursuant to section 46 of the *Act*.

Section 46 of the *Act* stipulates that a Tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy ended on August 13, 2011.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant vacated the rental unit on September 06, 2011. Although the Landlord had not viewed the rental unit to confirm it is empty of the Tenant's personal belongings, I find that a reasonable person would conclude that the rental unit had been vacated when a Tenant's relative returns the key and advises the Landlord that all of the property has been removed. As I have determined that the rental unit was vacated on September 06, 2011, I find that the Landlord does not require an Order of Possession and I dismiss the Landlord's application for an Order of Possession.

As the Tenant did not vacate the rental unit on August 13, 2011, as required by Ten Day Notice to End Tenancy for Unpaid Rent, I find that she was obligated to pay rent, on a per diem basis, for the days she remained in possession of the rental unit. As she has already been ordered to pay rent for the period between August 13, 2011 and August 31, 2011, I find that the Landlord has been duly compensated for that period. I also find that the Tenant must compensate the Landlord for the six days in September that she

remained in possession of the rental unit, at a daily rate of \$18.16, which equates to \$108.96.

Section 7(2) of the *Act* requires landlords who claim compensation for damage or loss to take reasonable measures to minimize their damage or loss. In my view the Landlord did not act reasonably when, after receiving notice from the Tenant's daughter that the rental unit had been vacated and after receiving a key to the rental unit from the daughter, he failed to inspect the rental unit to determine whether the rental unit had been vacated. I find that it is highly probable that if the rental unit had been inspected on September 06, 2011 the Landlord would have determined that the rental unit had been vacated and that he could have then rented the unit to his new tenant on September 07, 2011.

I find that the Landlord's belief that he could not rent the rental unit to a new tenant on September 07, 2011 because he did not have an Order of Possession to be inaccurate, as he could have rented the unit to the new tenant as soon as it became reasonably apparent that the rental unit had been vacated.

I find that the Landlord's belief that he could not rent the rental unit to a new tenant on September 07, 2011 because he did not have all of the keys to the rental unit to be inaccurate, as he could have changed the locks to the rental unit as soon as it became reasonably apparent that the rental unit had been vacated.

I find that the Landlord could have mitigated the lost revenue he experienced after September 06, 2011 and I therefore decline to award compensation for any period after this date.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$630.96, which is comprised of \$445.00 in unpaid rent/lost revenue from August of 2011, \$108.96 in lost revenue from September of 2011, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit, in the amount of \$272.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$331.46. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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: September 14, 2011.

Residential Tenancy Branch