



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, 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 unpaid rent, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord filed the Application for Dispute Resolution on November 18, 2011. The female Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and some evidence was sent to the Tenant, via registered mail, on November 18, 2011. A Canada Post receipt was submitted that corroborates this statement.

The Tenant stated that she was out of town until November 28, 2011 and she did not receive notification from Canada Post regarding the aforementioned registered mail until that date. She stated that she did not pick up the aforementioned mail until December 02, 2011 as she believed it was just a duplicate of other documents served to her on November 28, 2011.

The female Landlord stated that additional documents were personally served to the Tenant on November 28, 2011. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

Based on the testimony provided at the hearing and the Canada Post documentation submitted in evidence, I find that the Landlord served the Tenant with the Application for Dispute Resolution in accordance with the timelines established by the Residential Tenancy Branch and in accordance with section 89(1)(d) of the *Residential Tenancy Act* (Act). Based on the testimony provided at the hearing, I find that on November 28, 2011 the Tenant received notification that she had mail and that she personally received documents from the Landlord that clearly indicate a dispute resolution proceeding had been commenced and that a hearing had been scheduled for December 06, 2011.

I find that the Tenant could have picked up the documents that had been mailed to her on November 18, 2011 on November 28, 2011 or November 29, 2011. I find that had she picked up the documents in a timely manner she would have had ample time to prepare for these proceedings. Given that she had been made aware that a hearing had been scheduled for December 06, 2011, I find it would have been reasonable and prudent of her to pick up those documents in a timely manner, rather than delaying until December 02, 2011.

The Tenant stated that she had insufficient time to submit evidence in regards to these proceedings and she requested an adjournment for that purpose. The Tenant's application for an adjournment was denied for the following reasons:

- The Landlord served the Tenant with documents relating to these proceedings within the timelines established by the Residential Tenancy Branch Rules of Procedure
- The Tenant would have had more than six days to prepare for these proceedings if she had picked up the Application for Dispute Resolution as soon as she received notification that she had registered mail
- The Tenant was given documents that clearly inform her a hearing was taking place on December 06, 2011 eight days in advance of the hearing, which gave her substantial time to prepare a response to the issues in dispute
- A delay in these proceedings would be prejudicial to the Landlord, given that the matter relates to a Notice to End Tenancy, unpaid rent, and the continued occupancy of the rental unit
- The Landlord should not be unduly prejudiced by the Tenant's decision to wait 4 days before picking up her registered mail
- The Tenant did pick up the Application for Dispute Resolution and Notice of Hearing on December 02, 2011 and could have served evidence at that time. Although this evidence would not have been within the timelines established by the Rules of Procedure it is entirely possible that it would have been considered in these proceedings
- The evidence the Tenant stated she would present if granted an adjournment would not alter my decision in this matter, as it relates to deficiencies with the rental unit that do not support her decision to withhold rent.

The female Landlord applied to amend the Application for Dispute Resolution to include unpaid rent from December of 2011, as she did not realize the hearing would be scheduled after December 01, 2011. The Tenant opposed that application on the basis that the deficiencies with the rental unit were such that she should not be required to pay rent for either month.

I granted the Landlord's application to amend the Application for Dispute Resolution to include unpaid rent/loss of revenue from December of 2011, as I find the amendment does not unduly prejudice the Tenant. I find that it is reasonable, in these circumstances, for the Tenant to assume the Landlord wishes to recover all the rent that

is due, including rent due or loss of revenue for the month of December. More importantly, I find that the arguments for failing to pay rent in November are identical to the arguments for failing to pay rent in December so the issues should logically be addressed simultaneously.

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 to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in December of 2010; that the Tenant is required to pay monthly rent of \$1,850.00 on the first day of each month; and that the Tenant has not paid rent for November or December.

The Tenant stated that she elected not to pay rent for November or December because she believes there are deficiencies with the rental unit and that the Landlord has not made necessary repairs or improvements that were promised to her at the start of the tenancy. Neither party was permitted to discuss the nature of this allegation, as deficiencies with the rental unit, real or imagined, are not relevant to my decision regarding rent payments except in unique circumstances where a Tenant has paid for emergency repairs.

The Tenant acknowledged that she did not file an Application for Dispute Resolution seeking a resolution to her concerns regarding deficiencies with the rental unit; that she does not have authorization to retain any portion of her rent payment; and that she does not know of any legal basis for withholding her rent.

The female Landlord stated that she personally served a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of November 17, 2011, to the Landlord's son, who lives in the rental unit and is over the age of nineteen. The Tenant stated that she received this Notice to End Tenancy on, or about, November 19, 2011; that she read the Notice; and that she did not understand that she had to pay the rent or file an Application for Dispute Resolution within five days.

Analysis

Based on the undisputed evidence before me I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$1,850.00 by the first day of each month and that the Tenant did not pay rent for November or December of 2011.

Section 26(1) of the *Act* stipulates that a tenant must pay rent when it is due, whether or not the landlord complies with the *Act*, *Regulations*, or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. As the Tenant has not established that she has any legal grounds to withhold rent that was due on November 01, 2011 and she does not have the right to withhold rent because she believes there are deficiencies with the rental unit, I find that she must pay \$1,850.00 in rent that was due on November 01, 2011.

Section 46(1) of the *Act* stipulates that a landlord may end a tenancy if rent is not paid when it is due by giving notice to end the tenancy. Based on the undisputed evidence before me I find that the Tenant's adult son, who is living in the rental unit, was personally served with a Ten Day Notice to End Tenancy on November 07, 2011 and that the Tenant received this Notice on, or about November 09, 2011. I find that the Tenant was served with the Notice to End Tenancy, pursuant to section 88(e) of the *Act*, on November 07, 2011 and, in any event, was sufficiently served with the Notice to End Tenancy on November 09, 2011, pursuant to section 71(2)(b) of the *Act*.

Section 46 of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. 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 the effective date of the Notice to End Tenancy, which was November 17, 2011. On this basis I find that the Landlord is entitled to an Order of Possession.

As the Tenant did not vacate the rental unit on November 17, 2011, I find that she is 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 November 17, 2011 and November 30, 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 December that she remained in possession of the rental unit, at a daily rate of \$59.67, which equates to \$358.02.

I find that the Tenant fundamentally breached the tenancy agreement when she did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when she did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that her continued occupancy of the rental unit makes it difficult, if not impossible for the Landlord to find new tenants for December 15, 2011 as the Tenant has not yet vacated the rental unit. I therefore find that the Tenant must compensate the Landlord for the loss of revenue it is likely to experience between December 07, 2011 and December 31, 2011, which is \$1,491.98.

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 is entitled to an Order of Possession effective two days after service on the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$3,750.00, which is comprised of \$3,700.00 for unpaid rent and \$50.00 for the cost of filing this Application for Dispute Resolution, and I grant the Landlord a monetary Order in this amount. 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: December 07, 2011.

Residential Tenancy Branch