



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNDC, 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 money owed or compensation for damage or loss, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Agent for the Landlord stated that she personally served copies of the Application for Dispute Resolution and Notice of Hearing to the Tenant on November 21, 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.

The Agent for the Landlord applied to amend the Application for Dispute Resolution to reflect the correct address of the rental unit, as it appears on the tenancy agreement and the Notice to End Tenancy, both of which were submitted as evidence. I find that this amendment does not unreasonably prejudice the Tenant as she knew, or should have known, that this dispute relates to her rental unit.

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, late fees, and parking fees; 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 Agent for the Landlord stated that this tenancy began on August 01, 2010; that the Tenant was originally required to pay monthly rent of \$695.00; that her rent was increased to \$710.00, effective December 01, 2011, in accordance with the *Act*, and that the rent is due on the first day of each month.

The Landlord submitted a copy of the tenancy agreement and an amendment to the agreement, which indicates that the Tenant agreed to pay a parking fee of \$10.00, with her monthly rent.

The Agent for the Landlord stated that the Tenant did not pay when it was due on November 01, 2011. She stated that on December 03, 2011 the Tenant paid the rent that was due for November, a late fee for November, and a \$10.00 parking fee from November. She stated that the Tenant was issued a receipt for "use and occupancy only".

The Agent for the Landlord stated that the Tenant did not pay when it was due on December 01, 2011. She stated that on December 03, 2011 the Tenant paid \$445.00 in rent for November. She stated that the Landlord is seeking compensation for the remaining rent from December, which is \$265.00, a late fee for December, and a \$10.00 parking fee from December.

The Agent for the Landlord withdrew the claim for compensation arising from the month of January of 2012.

The Agent for the Landlord stated that an agent for the Landlord posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of November 13, 2011, at the rental unit on November 02, 2011. The Landlord submitted a copy of the Notice to End Tenancy and a Proof of Service of the Ten Day Notice that is signed by the Agent for the Landlord who posted the Notice.

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 \$695.00 and a \$10.00 parking fee by the first day of each month and that she was given notice that her rent would increase to \$710.00 on December 01, 2011.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant did not pay her rent for November until December 03, 2011 and that she paid \$445.00 in rent for December of 2011.

If 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 a Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted the door of the rental unit on November 02, 2011, which declared that the Tenant must vacate the rental unit by November 13, 2011.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on November 05, 2011.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on November 05, 2011, I find that the earliest effective date of the Notice was November 15, 2011.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was November 15, 2011.

Section 46 of the *Act* stipulates that a Tenant has five (5) 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 November 15, 2011. On this basis I find that the Landlord is entitled to an Order of Possession that is effective two days after the order is served upon the Tenant.

As the Tenant did not vacate the rental unit on November 15, 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 paid rent for the period between November 16, 2011 and November 30, 2011, I find that no money is due for November. I also find that the Tenant must compensate the Landlord for the six days in December that she has remained in possession of the rental unit, at a daily rate of \$22.90, which equates to \$137.40.

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 the month of December. I therefore find that the Tenant must compensate the Landlord for the loss of revenue it will, or is likely to, experience between December 07, 2011 and December 31, 2011, which is \$572.60 plus \$10.00 for parking. As the Tenant has already paid the Landlord \$445.00 in rent for December, I find that she still owes the Landlord \$275.00.

As this tenancy ended on November 15, 2011 and the Tenant is currently overholding the rental unit, I find that she was not contractually obligated to pay rent by December 01, 2011. As she was not required to pay rent by that date, I find that she is not obligated to pay a late fee for failing to pay the rent by December 01, 2011. I therefore dismiss the Landlord's claim for compensation for a late fee from December.

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 hereby grant the Landlord an Order of Possession that is effective two days after it is served upon 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 \$325.00, which is comprised of \$275.00 in unpaid rent/parking and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$325.00. 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 06, 2011.

Residential Tenancy Branch