



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, 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 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 Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to each Respondent at the rental unit, via registered mail, on December 14, 2011. The Landlord submitted Canada Post documentation that corroborates this statement. 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 Tenants 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; to keep all or part of the security deposit; and to recover the filing fee from the Tenants 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 Agent for the Landlord stated that this tenancy began on March 01, 2011; that the Tenant is required to pay monthly rent of \$925.00 by the first day of each month; and that the Tenant paid a security deposit of \$462.50.

The Agent for the Landlord stated that on December 01, 2011 the Tenant had not paid \$925.00 in rent that was due for December of 2011 or \$616.68 that was due for November of 2011. He stated that the \$308.33 in rent was paid on December 11, 2011 and another \$308.33 in rent was paid on December 12, 2011, leaving a balance owing for December of \$925.02.

The Agent for the Landlord stated that he was at the rental unit on January 02, 2012 and the rental unit was still occupied at that time. The Agent for the Landlord stated that he has no reason to believe the rental unit has been vacated since January 02, 2012. The Agent for the Landlord asked to amend the Application for Dispute Resolution to include a claim for unpaid rent from January of 2012.

The Agent for the Landlord stated that he posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of December 12, 2011, on the door of the rental unit on December 02, 2011. The Notice to End Tenancy, which was submitted in evidence, declared that the Tenant has failed to pay rent of \$611.00 that was due on December 01, 2011.

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 \$925.00 by the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant still owes \$925.00 in rent for December of 2011 plus \$0.02 in rent from November of 2011. As the Tenant is required to pay rent when it is due, pursuant to section 26(1) of the *Act*, I find that the Tenant is obligated to pay rent for December of 2011.

Although I accept that rent of \$925.02 is owing for the period ending on December 31, 2011, I decline to award compensation in this amount. The Landlord has only claimed compensation in the amount of \$611.00 in rent for this period and I award this amount of compensation. In the absence of the Tenant, I find that it would be unfair to increase the amount of this claim from \$611.00 to \$925.02. In reaching this conclusion I was influenced, in part, by the possibility that the Tenant may have elected to not attend this hearing because the Tenant agreed that \$611.00 in rent is owed. The Tenant may have elected to attend this hearing if the Tenant knew the Landlord was claiming that the Tenant owed \$925.02 in rent for the period ending on December 31, 2011.

I have amended Landlord's Application for Dispute Resolution to include rent that is due for January of 2012. As the Tenant was still occupying the rental unit on June 02, 2012 and I have no reason to conclude that they have now vacated the rental unit, I find that the Tenant knew, or should have known, that the Landlord would be seeking compensation for all rent that has accrued since the Landlord filed this Application for Dispute Resolution. I therefore find that it is reasonable to amend the Landlord's Application for Dispute Resolution to include a claim for compensation for any rent that is due for January.

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 at the rental unit on December 02, 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 December 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 December 05, 2011, I find that the earliest effective date of the Notice was December 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 December 15, 2011.

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. 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 December 15, 2011, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As I have already determined that the Tenant is obligated to pay rent for the period between December 16, 2011 and December 31, 2011, I find that additional rent for that period is not due. I find that the Tenant must compensate the Landlord for the three days in January that the Tenant has remained in possession of the rental unit, at a daily rate of \$29.83, which equates to \$92.47.

I decline to award compensation for the remainder of January as I do not know when the Tenant will be vacating the rental unit and the Landlord has not applied for compensation for loss of revenue. The Landlord retains the right to file for compensation for loss of revenue/unpaid rent for any losses that are experienced after January 03, 2011.

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 \$753.47, which is comprised of \$703.47 in unpaid rent 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 \$462.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$290.97. 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: January 03, 2012.

Residential Tenancy Branch