



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. It is clear from information on the Application for Dispute Resolution that the Landlord is also seeking a monetary Order for two NSF cheques and that issue will be considered at these proceedings.

The Agent for the Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and some documents the Landlord wishes to reply upon as evidence were sent to the Tenant at the rental unit, via registered mail, on September 17, 2012. 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 Tenant did not appear at the hearing.

The Agent for the Landlord stated that additional documents the Landlord wishes to reply upon as evidence were sent to the Tenant at the rental unit, via registered mail, on October 10, 2012. 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 88 of the *Act* and they were accepted as evidence for these proceedings.

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 NSF cheques; 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 Agent for the Landlord stated that this tenancy began in the Fall of 2011; that the Tenant had occupied a different rental unit in the same residential complex prior to this tenancy; that the Tenant is required to pay monthly rent of \$1,080.00 for rent and parking by the first day of each month; that on November 15, 2012 the Tenant paid a security deposit of \$437.50 for the previous tenancy; that this deposit was transferred to the current tenancy; and that he does not know if the Tenant paid an additional deposit when this tenancy began in the Fall of 2011.

The Agent for the Landlord stated that the Tenant paid \$1,030.00 in rent for May of 2012; \$1,000.00 in rent for June of 2012; \$500.00 in rent for July of 2012; no rent in August of 2012; \$380.00 in rent for September of 2012; and \$760.00 in rent for October 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 September 13, 2012, at the rental unit on September 03, 2012. The Notice declared that the Tenant owed \$1,080.00 in rent that was due on September 01, 2012.

The Landlord is seeking compensation for two cheques tendered by the Tenant that were not honoured by the Tenant's financial institution. The Landlord stated that the parties did not sign a tenancy agreement for this tenancy.

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 verbal tenancy agreement with the Landlord that requires the Tenant to pay monthly rent/parking of \$1,080.00 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 \$2,490.00 for rent/parking that has accrued up to the period ending September 30, 2012. As she is required to pay rent pursuant to section 26(1) of the *Act* when it is due, I find that the Tenant must pay \$2,490.00 in outstanding rent/parking to the Landlord.

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 Ten Day Notice to End Tenancy, which declared that the Tenant must vacate the rental unit by September 13, 2012, was posted at the rental unit on September 03, 2012.

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 September 06, 2012.

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 September 06, 2012, I find that the earliest effective date of the Notice was September 16, 2012.

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 September 16, 2012.

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 has ended. 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 September 16, 2012, 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 September 16, 2012 and September 30, 2012, I find that the Landlord has been fully compensated for that period. I also find that the Tenant must pay rent for the 18 days in October that she has remained in possession of the rental unit, at a daily rate of \$34.84, which equates to \$627.12. I find that the \$760.00 in rent the Tenant paid in October should be applied to the per diem rent she is required to pay for October, leaving her a credit for October in the amount of \$132.88.

I have not awarded the Landlord full rent for October as it is possible that the Tenant will vacate prior to the end of October and the Landlord has not claimed compensation for loss of revenue.

I find that there is no evidence to show that the Tenant signed a tenancy agreement in which she agreed to pay a fee if she tenders a cheque that is not honoured by her financial institution, as is required by section 7 of the *Residential Tenancy Regulation*. As the Landlord is only authorized to collect an NSF fee if the parties have a tenancy agreement that provides for these fees, I dismiss the Landlord's application for those fees.

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 \$2,540.00, which is comprised of \$2,490.00 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 retain the Tenant's security deposit, in the amount of \$437.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,102.50. 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: October 18, 2012.

Residential Tenancy Branch