



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, 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, a monetary Order for money owed of compensation for damage or loss, 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. At the outset of the hearing the Agent for the Landlord withdrew the Application for an Order of Possession, as they became aware, on September 13, 2012, that the rental unit had been vacated.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to each Tenant at the rental unit via registered mail, on August 29, 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 neither Tenant appeared at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent/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, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Agent for the Landlord stated that this tenancy began on February 15, 2012; that the Tenant was required to pay monthly rent of \$1,400.00 by the first day of each month; and that the Tenant paid a security deposit of \$700.00.

The Agent for the Landlord stated that the Tenant did not pay any rent for August or September of 2012.

The Agent for the Landlord stated that she posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of August 15, 2012, on the door of the rental

unit on August 02, 2012. The Notice declared that the Tenant owed \$1,400.00 in rent that was due on August 01, 2012.

At the hearing the Agent for the Landlord withdrew the claim for compensation for lost revenue from October of 2012.

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 requires the Tenant to pay monthly rent of \$1,400.00 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 did not pay rent for August of 2012. As the Tenant was required to pay rent by August 01, 2012, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,400.00 in outstanding rent 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 Notice to End Tenancy was posted at the rental unit on August 02, 2012, which required the Tenant to vacate the rental unit by August 15, 2012, 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 the Tenant remained in the rental unit until September 13, 2012. 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 the Tenant has already been ordered to pay rent for the period between August 15, 2012 and August 31, 2012, I find that the Landlord has been fully compensated for that period. I also find that the Tenant must compensate the Landlord for the thirteen days in September that the Tenant remained in possession of the rental unit, at a daily rate of \$46.66, which equates to \$606.58.

I find that the Tenant fundamentally breached the tenancy agreement when the Tenant did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when the Tenant did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that the continued occupancy of the rental unit made it difficult, if not impossible for the Landlord to find new tenants for any part of September, as the Landlord had limited opportunity to prepare, advertise, and show the unit. I therefore find that the Tenant must compensate the Landlord for the loss of revenue experienced between September 14, 2012 and September 30, which was \$793.42.

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 \$2,850.00, which is comprised of \$2,800.00 in unpaid rent/loss of revenue 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 \$700.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,150.00. 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: October 01, 2012.

Residential Tenancy Branch