



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, MND, 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 and/or Utilities, a monetary Order for unpaid rent and utilities, a monetary Order for damage to the rental unit; 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 Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant at the rental unit, via registered mail, on September 18, 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 Landlord stated that several documents she wishes to reply upon as evidence were sent to the Tenant at the rental unit, via registered mail, on October 03, 2012. The Landlord cited a Canada Post tracking number 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, unpaid utilities, and damage to the unit; 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 *Act*.

Background and Evidence

The Landlord stated that the Tenant moved from the different rental unit in the same residential complex into this rental unit on June 01, 2008; that the Tenant was required to pay monthly rent of \$1,300.00 for this rental unit by the first day of each month; that

the Tenant paid a security deposit of \$450.00 on May 20, 2008 for the former tenancy, which was applied to this tenancy when it began; and that on November 21, 2008 the Tenant paid an additional deposit of \$200.00 for this rental unit.

The Landlord stated that the Tenant did not pay any rent for September or October of 2012, and that she believes the Tenant vacated the rental unit on October 15, 2012.

The Landlord stated that she placed a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of September 15, 2012, on the door of the rental unit on September 02, 2012. The Notice declared that the Tenant owed \$1,300.00 in rent that was due on September 01, 2012.

The Landlord is seeking compensation for unpaid utilities, in the amount of \$89.72. The Landlord stated that the Tenant was required to pay 65% of utilities during the tenancy. The Landlord submitted three utilities bills that show gas and hydro charges of at least \$138.03 were incurred during the tenancy. The Landlord stated that the Tenant has not paid her portion of these bills.

The Landlord is seeking compensation for a damaged screen door, in the amount of \$200.00. The Landlord stated that the screen door was installed during the tenancy and was damaged by the Tenant's pet. The Landlord submitted no evidence to show that it will cost \$200.00 to repair/replace the door.

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 \$1,300.00 by the first day of each month; that she paid a security deposit of \$450.00 on May 20, 2008 for a previous tenancy, which was applied to this tenancy; and that on November 21, 2008 the Tenant paid an additional security deposit of \$200.00 for this rental unit.

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 any rent for September of 2012. As she was required to pay rent of \$1,300.00 on September 01, 2012, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,300.00 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 Ten Day Notice to End Tenancy, which directed the Tenant to vacate the rental unit by September 15, 2012, was posted at the rental unit on September 02, 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 by September 15, 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 compensate the Landlord for the 15 days in October that she remained in possession of the rental unit, at a daily rate of \$41.94, which equates to \$629.10.

I am unable to award compensation for rent for the full month of October, as the Tenant vacated the rental unit prior to the end of October and the Landlord has not filed an application for lost revenue.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant was required to pay 65% of utility charges incurred during the tenancy; that \$138.03 in utility charges were incurred during a portion of the tenancy; and that the Tenant has not paid her portion of these bills, which is \$89.72. I therefore find that the Tenant must pay this amount to the Landlord.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

In the absence of evidence to the contrary, I find that the Tenant damaged the screen door in the rental unit. In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord failed to establish the true cost of repairing or replacing the screen door. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence, such as a receipt, that corroborates the Landlord's claim that it will cost \$200.00 to repair the damage. On this basis, I dismiss the Landlord's claim for compensation for the screen door.

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 note that the Tenant is not obligated to serve this Order of Possession if the Landlord has reasonable grounds to conclude that the Tenant has vacated the rental unit.

I find that the Landlord has established a monetary claim, in the amount of \$2,068.82, which is comprised of \$1,929.10 in unpaid rent, \$89.72 for unpaid utilities, 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 of \$650.00 plus interest of \$4.73, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,414.09. 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