



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, CNR, MT, MNR, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, 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 claiming compensation for lost revenue and the Application has been amended to include an application for a monetary Order for money owed or compensation for damage or loss.

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 express mail, on November 07, 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 Tenant filed an Application for Dispute Resolution, in which the Tenant applied for more time to apply to set aside a Notice to End Tenancy and to set aside a Notice to End Tenancy for Unpaid Rent.

Issue(s) to be Decided

Should the Notice to End Tenancy be set aside; should the Tenant be granted additional time to apply to set aside the Notice to End Tenancy; is the Landlord entitled to an Order of Possession; is the Landlord entitled to a monetary Order for unpaid rent/lost revenue; and is the Landlord entitled to recover the fee for filing the Application for Dispute Resolution?

Background and Evidence

The Landlord stated that this tenancy began on June 01, 2012; that the Tenant is required to pay monthly rent of \$600.00 by the first day of the month; that the Tenant

only paid \$300.00 in rent for October; and that the Tenant has paid no rent for November or December of 2012.

The Landlord stated that he posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of November 07, 2012, on the door of the rental unit on October 25, 2012. The Notice declared that the Tenant owed \$300.00 in rent that was due on October 01, 2012.

Analysis

Based on the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$600.00 by the first day of each month; that the Tenant only paid \$300.00 of the rent that was due on October 01, 2012 and none of the rent that was due on November 01, 2012. As she is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$900.00 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 undisputed evidence, I find that a Ten Day Notice to End Tenancy for Unpaid Rent was posted on the Tenant's door on October 25, 2012, which required the Tenant to vacate the rental unit by November 07, 2012.

Section 46(1) of the *Act* authorizes a landlord to end a tenancy if rent is not paid when it was due. I find that the Landlord has established grounds to end this tenancy pursuant to section 46(1) of the *Act*. I therefore dismiss the Tenant's application to set aside the Notice to End Tenancy and I grant the Landlord an Order of Possession.

The Tenant has submitted no evidence that would cause me to grant her application for more time to apply to set aside the Notice to End Tenancy and I therefore dismiss that application.

As the Tenant did not vacate the rental unit by November 07, 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 November 07, 2012 and November 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 six days in December that she remained in possession of the rental unit, at a daily rate of \$19.35, which equates to \$116.10.

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 remainder of December. I therefore find that the Tenant must compensate the Landlord for the loss

of revenue he will likely experience between December 06, 2012 and December 31, 2012, which is \$483.90.

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 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 \$1,550.00, which is comprised of \$1,500.00 in unpaid rent/lost revenue 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 \$1,550.00. 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 05, 2012.

Residential Tenancy Branch