



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Metro Vancouver Housing Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, 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, a monetary Order for damage to the rental unit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. It is readily apparent from information included on the Application for Dispute Resolution that the Landlord is seeking a monetary Order for unpaid rent. The female Agent for the Landlord stated that the Landlord intended to apply for a monetary Order for unpaid rent, rather than for damage to the unit, and the Tenant stated that she understood this dispute related to unpaid rent. In these circumstances I find it appropriate to amend the Application for Dispute Resolution by removing the claim for damages and adding a claim for unpaid rent.

The female Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to both Tenants at the rental unit, via registered mail, on February 21, 2013. The Landlord submitted Canada Post documentation that corroborates this statement. The Tenant in attendance at the hearing stated that her co-tenant was unable to attend the hearing for medical reasons. I find that these documents have been served to both Tenants in accordance with section 89 of the *Residential Tenancy Act (Act)*, however only one of the Tenants attended the hearing.

The parties present at the hearing were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The female Agent for the landlord stated that several documents the Landlord wishes to rely upon as evidence, including a copy of the Ten Day Notice to End Tenancy, were mailed to the Tenant on February 21, 2013. The Tenant stated that she did not retrieve these documents from Canada Post until March 09, 2013. As the Tenant acknowledged receipt of the Landlord's evidence, it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act (Act)*?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on October 01, 2008 and that the Tenant is currently required to pay monthly rent of \$850.00 by the first day of each month.

The female Agent for the Landlord stated that the Tenant did not pay rent for February until February 21, 2013. The Tenant stated that the rent for February was paid on February 20, 2013. The parties agree that the Tenant received a receipt for this payment which indicates it was received for “use and occupancy only”.

The parties agree that rent has not been paid for March of 2013.

The male Agent for the Landlord stated that he posted a Ten Day Notice to Tenancy for Unpaid Rent, which had a declared effective date of February 15, 2013, on the door of the rental unit on February 06, 2013. The Notice declared that the Tenant has not paid rent of \$850.00 that was due on February 01, 2013. The male Agent for the Landlord stated that he photographed the notice on the door, although he did not submit it in evidence.

The Tenant stated that the Ten Day Notice was not located on the door and that the Notice to End Tenancy was not received by the Tenant until March 09, 2013, when it was received as evidence for these proceedings.

The female Agent for the Landlord asked the Tenant why she did not make contact with the Landlord when she received the receipt for rent for February of 2013, which declared the rent was being accepted for “use and occupancy only”. The Tenant stated that she noted the notation but did not understand what it meant.

The female Agent for the Landlord stated that the Tenant told her that she had previously worked as a landlord. The Tenant denies having experience as a landlord or an agent for a landlord. And she stated she is not familiar with the term “use and occupancy”.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that currently requires the Tenant to pay monthly rent of \$850.00 by the first day of each month; that rent for February was paid on February 20, 2013 or February 21, 2013; and that rent for March has not yet been paid.

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 must pay \$850.00 in rent for March of 2013.

If rent is not paid when it is due, a tenancy may be ended by giving Notice to End Tenancy pursuant to section 46 of the *Act*. On the basis of the testimony of the male Agent for the Landlord, I find that a Ten Day Notice to End Tenancy was posted on the door of the rental unit on February 06, 2013.

In the absence of evidence to the contrary, I also accept that the Tenant did not receive the Notice that was posted on the door of the rental unit. I find that it is entirely possible that both parties are being truthful in regards to the posting of the Notice, as it is possible that the Notice was removed by a third party and was not given to either Tenant.

On the basis of the testimony of the Tenant, I find that the Tenant did receive the Notice to End Tenancy, via registered mail, on March 09, 2013.

Section 46(4)(a) of the *Act* stipulates that a notice served pursuant to this section has no effect if the Tenant pays the outstanding rent within five days after receiving the notice. As the Tenant had already paid the rent for February prior to receiving the Notice to End Tenancy on March 09, 2013, I find that the Notice to End Tenancy that was posted on February 06, 2013 has no effect. I therefore dismiss the Landlord's application for an Order of Possession. The Landlord retains the right to serve another Notice to End Tenancy if rent for March of 2013 is not paid or if rent for any other month is not paid when it is due.

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 \$900.00, which is comprised of \$850.00 in unpaid rent 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 \$900.00. 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: March 18, 2013

Residential Tenancy Branch