



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 applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss; to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution. At the hearing the Landlord withdrew the application for an Order of Possession, as the rental unit has been vacated.

Both parties were represented at the hearing. They 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.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord is entitled to a monetary Order for unpaid rent and/or lost revenue and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on November 01, 2012; that the tenancy was for a fixed term, the fixed term of which was to expire on October 31, 2013; that the Tenant was required to pay monthly rent of \$1,550.00 by the first day of each month; that the Tenant paid a security and pet damage deposit of \$1,162.50; that the Landlord posted a Ten Day Notice to End Tenancy at the rental unit on March 04, 2013, which declared that the Tenant must vacate the rental unit by March 14, 2013; that the Landlord posted a One Month Notice to End Tenancy at the rental unit on March 04, 2013, which declared that the Tenant must vacate the rental unit by March 31, 2013; that the Tenant informed the Landlord, via email, that she would be vacating

the rental unit on March 31, 2013; that the Tenant did not vacate the rental unit until April 03, 2013; that the Tenant still owes \$119.00 in rent for February of 2013; and that no rent has been paid for March or April of 2013.

The Tenant acknowledged receiving the Ten Day Notice to End Tenancy and the One Month Notice to End Tenancy on March 04, 2013.

The Landlord is seeking lost revenue for April of 2013. She stated that she has not yet advertised the rental unit.

Analysis

Based on the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,550.00 by the first day of each month; that the Tenant did not pay \$119.00 of the rent for February of 2013; and that the Tenant did not pay any of the rent that was due on March 01, 2013. As she was required to pay rent when it is due, pursuant to section 26(1) of the *Residential Tenancy Act (Act)*, I find that the Tenant must pay \$1,669.00 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*. On the basis of the undisputed evidence, I find that the Landlord posted a Ten Day Notice to End Tenancy on the door of the rental unit on March 04, 2013, which declared that the tenancy was ending on March 14, 2013.

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 ended on the effective date of the Ten Day Notice to End Tenancy, which was March 14, 2013.

As the Tenant did not vacate the rental unit on March 14, 2013, 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 March 15, 2013 and March 31, 2013, I find that the Landlord has been fully compensated for that period. I also find that the Tenant must compensate the Landlord for the three days in April that she remained in possession of the rental unit, at a daily rate of \$51.67, which equates to \$155.01.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the Landlord did not take

reasonable steps to find a new tenant for April, as she has made no effort to advertise the rental unit. As the Landlord did not mitigate the loss of revenue she experienced in April, I dismiss her claim for loss of revenue.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,874.01, which is comprised of \$1,824.01 in unpaid rent and \$50.00 in compensation for the fee for filing this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the security/pet damage deposits of \$1,162.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$711.51. 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: April 09, 2013

Residential Tenancy Branch

