



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, CNR, MNR, MNSD, 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, 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.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent.

The Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were sent to the Tenant at the rental unit, via registered mail, on May 09, 2013. 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.

Issue(s) to be Decided:

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 keep all or part of the security deposit?

Background and Evidence:

The Landlord submitted a copy of a tenancy agreement, which is signed by the Tenant, which shows this tenancy began on December 15, 2012; that the Tenant is required to pay monthly rent of \$850.00 by the fifteenth day of each month; and that the Tenant paid a security deposit of \$425.00.

The Landlord stated that the cheque the Tenant tendered for rent for the period between April 15, 2013 and May 14, 2013 did not clear the bank and that the Tenant has not yet paid the rent that was due on April 15, 2013. The Landlord is seeking compensation for lost revenue from May and June of 2013.

The Landlord stated that he does not know when the Tenant vacated the rental unit but when he went to the unit on May 15, 2013 it appeared that the rental unit may have been vacated.

The Landlord stated that on April 25, 2013 he posted a Ten Day Notice to End Tenancy for Unpaid Rent at the rental unit, which had an effective date of May 08, 2013. The Notice declared that the Tenant owed \$850.00 in rent that was due on April 15, 2013.

Analysis

On the basis of 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 \$850.00 by the fifteenth day of each month, and that the Tenant has not paid the rent that was due on April 15, 2013. As she is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$850.00 in outstanding rent to the Landlord for the period between April 15, 2013 and May 14, 2013.

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 a Notice to End Tenancy was posted at the rental unit on April 25, 2013, which directed the Tenant to vacate the rental unit by May 08, 2013, pursuant to section 46 of the *Act*.

As the Tenant has not paid the outstanding rent since receiving the Notice to End Tenancy, I find that the Notice to End Tenancy should not be set aside and that this tenancy ended on the basis of the Notice to End Tenancy that was served. On this basis I find that the Landlord is entitled to an Order of Possession.

I find that the Tenant fundamentally breached the tenancy agreement when she did not pay rent when it was due. As the Tenant disputed the Notice to End Tenancy, I find it was reasonable for the Landlord to make no attempts to re-rent the unit prior to this hearing. I find that the Tenant's decision to dispute the Notice significantly contributed to the loss of revenue the Landlord experienced between May 15, 2013 and May 31, 2013. I therefore find that the Tenant must compensate the Landlord for the loss of revenue he experienced between those dates, which is \$425.00.

As it is entirely possible that the Landlord may be able to find a new tenant for June 01, 2013, I dismiss the Landlord's application for compensation for lost revenue for any period after May 31, 2013, with leave to reapply on that specific issue.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the fee for filing an 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. In the event the Landlord is not certain that the rental unit has been vacated, he may serve this Order on the Tenant, file it with the Supreme Court of British Columbia, and enforce it as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$1,325.00, which is comprised of \$1,275.00 in unpaid rent/lost revenue and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain the Tenant's security, in the amount of \$425.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance 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: May 29, 2013

Residential Tenancy Branch

