



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNDC, 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 or Utilities, a monetary Order for unpaid rent or utilities, 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 for to set aside a Notice to End Tenancy for Unpaid Rent and to recover the fee for filing an Application for Dispute Resolution.

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 to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant, by mail, on May 24, 2013. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch, copies of which were delivered to the Landlord's business office on May 30, 2013. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings. The Landlord stated that she was prepared to proceed with the hearing and she declined the opportunity of requesting an adjournment for the purposes of considering the late evidence that was provided to her.

Issue(s) to be Decided:

Should the Notice to End Tenancy be set aside; is the Landlord entitled to an Order of Possession; and is the Landlord entitled to a monetary Order for unpaid rent/lost revenue?

Background and Evidence:

The Landlord and the Tenant agree that this tenancy began on August 01, 2012; that the tenancy agreement required the Tenant to pay monthly rent of \$2,100.00 by the first day of each month; that the Tenant paid a security deposit of \$1,050.00; that the Tenant paid a pet damage deposit of \$1,050.00; that the Tenant has not paid any rent for May of 2013; and that on May 10, 2013 the Tenant was personally served with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which declared that the Tenant must vacate the unit by May 20, 2013.

The Landlord and the Tenant agree that the Tenant returned one key to the rental unit to the Landlord's business office on May 31, 2013. The Tenant stated that she still has one key to an interior door of the residential complex.

The Tenant stated that all of her personal property was removed from the rental unit on, or about, May 25, 2013. She stated that any property left at the rental unit is either garbage or property belonging to the Landlord. The Landlord stated that when she was at the rental unit on June 04, 2013 she noted there was still personal property belonging to the Tenant in the unit.

The Landlord stated that she began advertising the rental unit on two popular websites on, or about, May 15, 2013; that she has not shown the rental unit as the Tenant has accused her of harassment and asked her to have no further contact; and that she has not yet rented the rental unit. The Tenant stated that she did tell the Landlord to stop contacting her as she felt she was being harassed.

Analysis

On the basis of the undisputed evidence, I find that the Tenant did not pay the \$2,100.00 in rent that she was obligated to pay on May 01, 2013. As she is 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 \$2,100.00 in outstanding rent for May.

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 Tenant was personally served with a Ten Day Notice to End Tenancy on May 10, 2013. As the Tenant did not

pay rent when it was due and she was served with a proper notice to end the tenancy, I find that the Landlord was entitled to end this tenancy in accordance with section 46 of the *Act*. I therefore dismiss the Tenant's application to set aside this Notice to End Tenancy.

On the basis of the Tenant's testimony that she has moved out of the rental unit and that she no longer has personal property at the rental unit, I find that this tenancy has ended in accordance with section 46 of the *Act*. As the Tenant has vacated the rental unit and no longer has the legal right to access the unit, I find that there is no need to issue an Order of Possession.

I find that the Tenant breached the tenancy agreement when she did not pay rent when it was due. I find that the Tenant 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, which was May 20, 2013. I find that her continued occupancy of the rental unit made it difficult, if not impossible, for the Landlord to find a new tenant for June 01, 2013. I therefore find that the Tenant must compensate the Landlord for the loss of revenue she will likely experience between June 01, 2013 and June 14, 2013, in the amount of \$1,050.00.

As it is possible the Landlord will be able to rent the rental unit for June 15, 2013, I dismiss the claim for lost revenue for the period between June 15, 2013 and June 30, 2013, with leave to reapply.

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. I find that the Tenant's application is without merit and that she is not entitled to recover the fee for filing an Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$3,200.00, which is comprised of \$3,150.00 in unpaid rent/lost revenue and \$50.00 in compensation for the filing fee paid by the Landlord. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the security deposit and pet damage deposit of \$2,100.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,100.00. 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: June 06, 2013

Residential Tenancy Branch

