



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.

The Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and documents that Landlord wishes to rely upon as evidence were sent to the Tenant at the rental unit, via registered mail, on August 08, 2013 and were received on August 12, 2013. The Landlord submitted Canada Post documentation that corroborates this testimony. 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; to a monetary Order for unpaid rent/lost revenue; and to keep all or part of the security deposit?

Background and Evidence:

The Landlord stated that this tenancy began on April 01, 2013; that the Tenant agreed to pay monthly rent of \$1,500.00 by the first day of each month; that the Tenant paid a security deposit of \$750.00; and that the Tenant paid no rent for July or August of 2013.

The Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of August 04, 2013, was posted on the door of the rental unit on July 21, 2013. The Notice declared that the Tenant owed \$1,500.00 in rent that was due on July 01, 2013.

The Landlord stated that the rental unit that the rental unit had not been vacated by August 23, 2013 and the Tenant had not indicated an intent to leave when he spoke to her on that date. He stated that he believes the rental unit had been vacated by September 10, 2013, although he is not certain.

Analysis

On the basis of the undisputed evidence, I find that the Tenant failed to pay \$1,500.00 in rent that was due on July 01, 2013 and \$1,500.00 in rent that was due on August 01, 2013. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$3,000.00 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 a Notice to End Tenancy, issued pursuant to section 46 of the *Act*, was posted on the Tenant's door on July 21, 2013, which declared that the Tenant must vacate the rental unit by August 04, 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 has ended. 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. 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 this continued occupancy of the rental unit made it difficult, if not impossible, for the Landlord to find new tenants for September 01, 2013. I therefore find that the Tenant must compensate the Landlord for the loss of revenue the Landlord will likely experienced between September 01, 2013 and September 15, 2013, which is \$750.00.

I decline to award compensation for any period after September 15, 2013, as it is possible that the Landlord may find a new tenant for that date. The Landlord retains the right to file for compensation if a new tenant is not found.

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.

The Landlord has established a monetary claim, in the amount of \$3,800.00, which is comprised of \$3,750.00 in unpaid rent 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 deposit of \$750.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$3,050.00. 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: September 12, 2013

Residential Tenancy Branch

