



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR, MNSD, FF

Introduction

This hearing was the subject of a direct request proceeding on September 16, 2013 but was adjourned to a participatory hearing, as per my interim decision dated September 16, 2013.

This hearing was convened to consider the Application for Dispute Resolution filed by the Landlord, in which the Landlord applied for an Order of Possession and a monetary Order. The Landlord subsequently amended the Application for Dispute Resolution to include an application to retain the security deposit and to recover the fee for filing the Application for Dispute Resolution, and those matters will also be considered at this hearing.

The Agent for the Landlord stated that the amended Application for Dispute Resolution and Notice of Hearing were served to each Respondent on September 25, 2013. The Respondent#2 acknowledged that he and the Tenant received these documents.

The Landlord and the Tenant were both represented at the hearing. They were each provided with the opportunity to present relevant testimony and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; and to retain the security deposit, pursuant to sections 38, 55 and 67 of the *Residential Tenancy Act (Act)*?

Preliminary Matter

During the hearing the Agent for the Landlord stated that the Landlord believes Respondent #2 is an occupant of the rental unit, rather than a tenant. She stated that on the basis of this belief the Landlord would like to amend the Application for Dispute Resolution by removing his name from the Application for Dispute Resolution. I find this

application to be reasonable, as the Landlord has the right to proceed against only one tenant even if there is more than one tenant named on the tenancy agreement. I therefore amend the Application for Dispute Resolution to remove the name of Respondent #2.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on November 01, 2012 and that the Landlord and the Tenant have a signed tenancy agreement, which requires the Tenant to pay monthly rent of \$1,150.00 by the first day of each month.

The Respondent stated that he moved into the rental unit on January 01, 2013; that he did not enter into a written tenancy agreement with the Landlord; that he and the Landlord verbally agreed that he could live in the rental unit for monthly rent of \$375.00; and that the rent is paid directly to the Landlord by the Provincial Government.

The Agent for the Landlord stated that the Landlord did not enter into a tenancy agreement with the Respondent; that the Landlord believes the Respondent is simply an occupant of the rental unit; and that the Provincial Government pays rent of \$375.00 to the Landlord on behalf of the Respondent.

The Tenant stated that there was a fire in the unit; that the kitchen is not fully functional as a result of the fire; and the Landlord agreed to reduce the rent in exchange for the Tenant and the Respondent repairing the damage. He stated that he has been unable to rent out the third bedroom as a result of the fire and that the Landlord will not approve a third roommate. He stated that the parties did not agree to an amount for the rent reduction.

The Agent for the Landlord does not know if there was a fire in the rental unit but she stated that the Landlord did not agree to reduce the rent.

The Agent for the Landlord stated that the Tenant paid a security deposit of \$575.00. The Landlord submitted a copy of the tenancy agreement that corroborates this testimony. The Tenant stated that a security deposit of \$568.50 was paid.

The Landlord, the Tenant, and the Respondent agree that rent of \$750.00 was paid for August, September, and October of 2013. The Landlord is seeking unpaid rent of \$400.00 for each of those three months.

The Agent for the Landlord stated that on September 04, 2013 the Landlord posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of September 14, 2013, on the door of the rental unit. The Landlord submitted a Proof of Service of the Ten Day Notice to End Tenancy that corroborates this testimony.

The Tenant stated that he has received several Ten Day Notices to End Tenancy; that he is in possession of the Ten Day Notice to End Tenancy, dated September 04, 2013; and that he does not recall when he received the Notice.

Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$1,150.00 by the first day of each month. In reaching this conclusion I was heavily influenced by the written tenancy agreement submitted in evidence, which names the Tenant as the sole tenant.

I favour the testimony of the Agent for the Landlord, who stated that a security deposit of \$575.00 was paid, over the testimony of the Tenant who stated that a security deposit of \$568.50 was paid, as the written tenancy agreement corroborates the testimony of the Agent for the Landlord.

I find that the Tenant submitted insufficient evidence to establish that the Landlord agreed to reduce the monthly rent of \$1,150.00. In reaching this conclusion I was influenced by the testimony of the Agent for the Landlord, who stated that the Landlord did not agree to a rent reduction. In reaching this conclusion I was also influenced by the testimony of the Tenant, who stated that the parties did not agree to an amount of a rent reduction. As there is no evidence that the parties agreed on the amount the rent would be reduced, I find that they did not clearly agree to alter the rent due. I therefore find that the Tenant remained obligated to pay monthly rent of \$1,150.00.

Section 26(1) of the *Act* requires tenants to pay rent to their landlord, even if the Landlord does not comply with the *Act* or the tenancy agreement. I therefore find that the Tenant was obligated to pay rent of \$1,150.00 even if there were deficiencies with the rental unit, given that the Tenant was still occupying the unit. The Tenant retains the right to file an Application for Dispute Resolution seeking compensation for deficiencies with the rental unit.

On the basis of the undisputed evidence, I find that only \$750.00 in rent was paid each month for August, September, and October of 2013. I therefore find that the Tenant must pay the outstanding rent of \$1,200.00 for those three months, pursuant to section 26(1) of the *Act*.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within ten days if appropriate notice is given to the tenant. On the basis of the evidence submitted and in the absence of evidence to the contrary, I find that the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on September 04, 2013.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on September 07, 2013.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on September 07, 2013, I find that the earliest effective date of the Notice was September 17, 2013.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was September 17, 2013.

Section 46 of the *Act* stipulates that a Tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. 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 will grant the landlord an Order of Possession that is effective two days after it is served upon the Tenant.

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 \$1,250.00, which is comprised of \$1,200.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I grant the Landlord authority to retain the Tenant's security deposit of \$575.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$675.00. 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 16, 2013

Residential Tenancy Branch

