



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 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 to me.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were mailed to the Tenant at the rental unit. The Tenant stated that both her and her husband, who is the other named Respondent, and that she is representing him at these proceedings.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were not served to the Tenant. As the documents were not served to the Tenant they were not accepted as evidence for these proceedings.

Issue(s) to be Decided:

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

Background and Evidence:

The Landlord and the Tenant agree that both Respondents entered into a tenancy agreement with the Landlord, which required them to pay monthly rent of \$1300.00 by the first day of each month; that the Tenant paid a security deposit of \$650.00; that no rent was paid for July or August of 2013; that the Tenant verbally informed the Landlord

that they were moving out of the rental unit on July 17, 2013; that the son informed the Landlord that he wished to remain in the rental unit; and that the Landlord and the son never did enter into a new tenancy agreement.

The Agent for the Landlord stated that on July 24, 2013 he posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of July 31, 2013, on the door of the rental unit on July 31, 2013. The Tenant stated that she believes her son located this Notice to End Tenancy near the end August of 2013, although she has never seen the Notice and she does not know when the Notice required the rental unit to be vacated..

The Tenant stated that her son vacated the rental unit on August 28, 2013, and that he left the keys in the back yard as per the directions of the Landlord. The Landlord stated that the keys were not returned and that there was no agreement to leave the keys in the back yard. He stated that he believes the rental unit was vacated sometime prior to August 30, 2013.

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 \$1,300.00 by the first day of each month and that the rent that was due on July 01, 2013 has not been paid. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,300.00 in outstanding rent to the Landlord for July of 2013.

On the basis of the testimony of the Landlord, I find that a Ten Day Notice was posted at the rental unit on July 24, 2013, which declared that the Tenant must vacate the rental unit by July 31, 2013. I favour the testimony of the Landlord over the testimony of the Tenant in this regard, because the Tenant is relying on hearsay evidence regarding the date the Notice was located, which is generally considered to be less reliable. Given the Notice to End Tenancy is dated July 24, 2013 and the Landlord filed an application for an order of possession on August 09, 2013, I find it highly unlikely that the Notice was not posted until the end of August.

As the Tenant did not vacate the rental unit on the effective date of the Notice, I find that the Tenant is obligated to pay rent for the period the Tenant remained in possession of the rental unit. As the rental unit was occupied for the majority of the month of August, I find that the Tenant must pay rent for that month, in the amount of \$1,300.00.

I find that the Tenant fundamentally breached the tenancy agreement when the Tenant did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when the rental unit was not vacated by the effective date of the Ten Day Notice to End Tenancy. I find that the continued occupancy of the rental unit makes it difficult, if not impossible, for the Landlord to find new tenants for prior September of 2013. I therefore find that the Tenant must compensate the Landlord for

the loss of revenue it can be reasonably expected to experience for September of 2013, in the amount of \$1,300.00.

Conclusion

The Landlord has established a monetary claim, in the amount of \$3,950.00, which is comprised of \$3,900.00 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 deposit of \$650.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$3,300.00. 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 17, 2013

Residential Tenancy Branch

