

DECISION

Dispute Codes

OPR, MNR

Introduction

These proceedings were initiated by way of a direct request proceeding but were adjourned to a participatory hearing, as the Landlord did not submit the signatory page of the tenancy agreement when he submitted documents for the Direct Request Proceeding to the Residential Tenancy Branch. I was, therefore, unable to determine that the Landlord had a signed tenancy agreement with the Tenant.

This hearing was convened to consider the merits of the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent and a monetary Order for unpaid rent.

At the hearing the Landlord applied to amend the Application for Dispute Resolution to include rent that has accrued since the Application for Dispute Resolution was filed. As it would be reasonable for the Tenant to assume that the Landlord is seeking all of the rent due, including rent that had accrued since the Application for Dispute Resolution was filed, the Application for Dispute Resolution has been amended accordingly.

As outlined in my Interim Decision, I am satisfied that the Tenant has been served with the Direct Request Proceeding Package, which included all the evidence submitted to the Residential Tenancy Branch on September 17, 2013. It was therefore accepted as evidence for these proceedings.

At the hearing the Landlord stated that on October 08, 2013 the Notice of Reconvened Hearing was sent to the Tenant, via registered mail, at the rental unit. The Landlord cited a Canada Post tracking number that corroborates this testimony. In the absence of evidence to the contrary, I accept that this document was served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

On September 30, 2013 the Landlord submitted two additional documents to the Residential Tenancy Branch, one of which was the missing signatory page of the tenancy agreement. At the hearing the Landlord stated that on October 05, 2013 these documents were sent to the Tenant, via registered mail, at the rental unit. The Landlord cited a Canada Post tracking number that corroborates this testimony. In the absence of evidence to the contrary, I accept that these documents were served in accordance with section 88 of the *Act*, and they were accepted as evidence for these proceedings.

The Landlord stated that he has submitted other documents to the Residential Tenancy Branch for another hearing regarding the same tenancy, but he has submitted no other evidence in regards to this matter.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent, pursuant to sections 55 and 67 of the *Act*?

Background and Evidence

The Landlord stated that this tenancy began on July 15, 2012 and that the Tenant is required to pay monthly rent of \$750.00 by the first day of each month. This testimony is corroborated by the signed tenancy agreement that was submitted in evidence. The Landlord stated that he believes the Tenant moved out of the rental unit sometime in November of 2013, although she has left some property at the unit.

The Landlord submitted a rent ledger that indicates the Tenant owed rent totalling \$3,450.00 on September 01, 2013. The Landlord stated that none of that rent has been paid and that rent for October has not been paid, leaving a total debt of \$4,200.00.

The Landlord stated that he posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of August 01, 2013, on the door of the rental unit on July 21, 2013. This statement is corroborated by a Proof of Service of Ten Day Notice to End Tenancy that was submitted in evidence, which was signed by both the Landlord and his wife. The Notice, which was submitted in evidence, declared that the Tenant owed \$2,700.00 in rent that was due on July 01, 2013.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$750.00 by the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant still owes rent of \$2,700.00 that was due on, or before, August 01, 2013, and that no rent has been paid for September and October of 2013. As the Tenant remained in possession of the rental unit in September and October, I find that the Tenant must also pay \$1,500.00 in rent for those two months. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant currently owes \$4,200.00 in rent to the Landlord for the period ending October 31, 2013.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on July 21, 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 July 24, 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 July 24, 2013, I find that the earliest effective date of the Notice was August 03, 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 was August 03, 2013.

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 \$2,450.00, which is comprised of \$2,400.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord will be retaining the Tenant's security deposit plus interest, in the amount of \$600.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for \$4,200.00. 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: November 06, 2013

Residential Tenancy Branch