



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, 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, and to recover the fee for filing an Application for Dispute Resolution.

The Landlord stated that the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant at the rental unit, via registered mail, on November 18, 2013. The Landlord cited a Canada Post tracking number that corroborates this statement. 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.

The Landlord stated that he submitted a copy of a Notice to End Tenancy, dated October 28, 2013, and a copy of a Notice to End Tenancy, dated November 04, 2013, to the Residential Tenancy Branch (RTB) when he filed the Application for Dispute Resolution on November 15, 2013. I did not have either document available to me at the time of this hearing.

In the absence of evidence to the contrary, I accept that the Notices to End Tenancy were submitted to the RTB and may have been misplaced by the RTB. The Landlord was therefore provided the opportunity to resubmit the documents to the RTB. This decision was not rendered until I had the opportunity to view the Notices to End Tenancy, which I received on January 20, 2013.

Issue(s) to be Decided:

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent/lost revenue?

Background and Evidence:

The Landlord stated that this tenancy began in 2013; that the Tenant agreed to pay monthly rent of \$850.00 by the first day of each month; that the Tenant still owes \$450.00 in rent for October of 2013; that no rent was paid for November of 2013; that no rent was paid for December of 2013; and that no rent was paid for January of 2014.

The Landlord stated that on October 28, 2013 he personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent. This Notice has a declared effective date of November 07, 2013 and it declares that the Tenant owes \$425.00 in rent that was due on October 01, 2013.

The Landlord stated that on November 04, 2013 he posted a Ten Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit. This Notice has a declared effective date of November 15, 2013 and it declares that the Tenant owes \$850.00 in rent that was due on November 01, 2013. The Landlord stated that he did not include the rent that was still overdue from October of 2013 on this Notice to End Tenancy.

Analysis

On the basis of 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 \$850.00 by the first day of each month and that the Tenant still owed \$1,275.00 in rent for the months of October and November of 2013. As she is required to pay rent when it is due, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,275.00 in rent for October and November of 2013.

If rent is not paid when it is due, a landlord may end a tenancy pursuant to section 46 of the *Act*. On the basis of the undisputed evidence, I find that a Notice to End Tenancy was personally served to the Tenant on October 28, 2013, which declared that she must vacate the rental unit by November 07, 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 ended on November 07, 2013. On this basis I find that the Landlord is entitled to an Order of Possession.

As the Tenant did not vacate the rental unit on November 28, 2013, I find that she is obligated to pay rent, on a per diem basis, for the days she remained in possession of the rental unit. As she has already been ordered to pay rent for the entire month of November, I find that the Landlord has been fully compensated for that month.

I find that the Tenant must also compensate the Landlord for the month of December of 2013, in the amount of \$850.00, as she remained in possession of the rental unit for the entire month. I find that the Tenant must also compensate the Landlord for the first 9 days of January that she remained in possession of the rental unit, at a daily rate of \$27.42, which equates to \$246.78.

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 her continued occupancy of the rental unit made it difficult, if not impossible, for the Landlord to find new tenants for January of 2014 as the Tenant had not vacated the rental unit by January 09, 2014. I therefore find that the Tenant must compensate the Landlord for the loss of revenue experienced between January 10, 2014 and January 31, 2014, which was \$603.22.

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 \$3,025.00, which is comprised of \$2,975.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution, and I grant the Landlord a monetary Order for this amount. 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: January 20, 2014

Residential Tenancy Branch