



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, 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, 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 on December 31, 2013 he personally served each Respondent with copies of the Application for Dispute Resolution and Notice of Hearing. 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 neither Tenant appeared at the hearing.

The Landlord submitted a copy of the Notice to End Tenancy to the Residential Tenancy Branch on January 13, 2014. He stated that he personally served this document to the male Tenant on January 05, 2014. In the absence of evidence to the contrary, this document was accepted as evidence for these proceedings.

During the hearing the Landlord applied to amend the Application for Dispute Resolution to include unpaid rent from January of 2014. As it would be reasonable for the Tenant to assume that the Landlord is seeking all of the rent that is currently due, including rent that became due after the Landlord filed the Application for Dispute Resolution, I granted the request for an amendment.

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 keep all or part of the security deposit?

Background and Evidence:

The Landlord stated that this tenancy began on July 27, 2012; that the Tenant is currently required to pay monthly rent of \$975.00 by the first day of each month; that the

Tenant paid a security deposit of \$475.00; that the Tenant still owes \$500.00 in unpaid rent from May of 2012; that the Tenant paid no rent for December until December 17, 2013, at which time he paid \$300.00; and that the Tenant paid no rent for January until January 03, 2013, at which time he paid \$400.00.

The Landlord stated that on December 15, 2013 he personally served the male Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of December 25, 2013.

Analysis

Based on the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that currently requires the Tenant to pay monthly rent of \$975.00 by the first day of each month; that the Tenant still owes \$500.00 in rent from May of 2013; and that the Tenant still owes \$675.00 in rent from December of 2013. As the Tenant is required to pay rent when it is due, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,175.00 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*. Based on the undisputed evidence, I find that on December 15, 2013 the male Tenant was served with a Notice to End Tenancy that directed the Tenant to vacate the rental unit by December 25, 2013, pursuant to section 46 of the *Act*.

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.

As the Tenant did not vacate the rental unit on December 25, 2013, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay rent for the period between December 26, 2013 and December 31, 2013, I find that the Landlord has been fully compensated for that period. I also find that the Tenant must compensate the Landlord for the 27 days in January that the Tenant has remained in possession of the rental unit, at a daily rate of \$31.45, which equates to \$849.15.

I am not awarding the Landlord rent for the entire month of January of 2014, as it is entirely possible that the Tenant will vacate the rental unit today and the Landlord has not claimed compensation for lost revenue.

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 \$2,074.15, which is comprised of \$2,024.15 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 authorize the Landlord to retain the Tenant's security deposit of \$475.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,599.15. 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 27, 2014

Residential Tenancy Branch

