



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord's application: OPR; MNR; MNSD; FF

Tenant's application: CNR; OLC; FF

Introduction

This Hearing was convened to consider cross applications. The Landlord seeks an Order of Possession; a Monetary Order for unpaid rent and loss of revenue; to retain the security deposit in partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenant.

The Tenant seeks to cancel the Notice to End Tenancy for Unpaid Rent; an Order that the Landlord comply with the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The Landlord's agent gave affirmed testimony at the Hearing.

The Landlord's agent testified that the Notice of Hearing documents and copies of the Landlord's documentary evidence were mailed to the Tenant, via registered mail, to the rental unit on January 7, 2014. The documents were returned to the Landlord "unclaimed".

Based on the affirmed testimony of the Landlord's agent and the documentary evidence provided by the Landlord, I am satisfied that the Tenant was duly served with the Notice of Hearing documents by registered mail, pursuant to the provisions of Section 89(1)(c) of the Act. Service in this manner is deemed to be effected 5 days after mailing the documents. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference.

The Tenant's application was scheduled to be heard via teleconference at the same time as the Landlord's application, 9:30 a.m., February 19, 2014. The Landlord signed into the conference and was ready to proceed, however by 9:40 p.m., the Tenant had not yet signed into the teleconference.

Rule 10.1 of the Residential Tenancy Branch Rules of Procedure provides as follows:

Commencement of Hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

I find that that the Tenant has abandoned her application, and therefore I dismiss the Tenant's application without leave to re-apply.

Preliminary Matter

Both parties had indicated a second tenant on their Applications. The Landlord provided a copy of the tenancy agreement in evidence, which was signed by the Tenant DT on September 5, 2013. The other tenant did not sign the tenancy agreement. Therefore, I find that the other tenant is not a "tenant" under the tenancy agreement. I find that he is an occupant only, with no rights or responsibilities under the tenancy agreement. Therefore, the Applications were amended to strike out the occupant's name as a party to the proceedings.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession and a monetary award for unpaid rent?

Background and Evidence

The Landlord's agent gave the following testimony:

Monthly rent is \$1,300.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$650.00 on September 5, 2013.

On December 30, 2013, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, by posting the Notice on the Tenant's door at the rental unit.

The Landlord seeks a monetary award for unpaid rent and loss of revenue, as follows:

Unpaid rent for December, 2013	\$300.00
Unpaid rent for January, 2014	\$1,300.00
Loss of revenue for February, 2014	<u>\$1,300.00</u>
TOTAL AMOUNT CLAIMED	\$2,900.00

Analysis

I accept that the Landlord served the Tenant with the Notice to End Tenancy by posting the Notice on the Tenant's door on December 30, 2013. Pursuant to the provisions of

Section 90 of the Act, service in this manner is deemed to be effected three days after posting the documents, in this case January 2, 2014. The Tenant did not pay all of the arrears, or file for dispute resolution, within 5 days of receiving the documents.

Therefore, pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on January 12, 2014. I find that the Landlord is entitled to an Order of Possession and a monetary award in the amount of **\$2,900.00**.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary claim. No interest has accrued on the security deposit.

The Landlord has been successful in her application and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

The Landlord has established a monetary claim as follows:

Unpaid rent and loss of revenue	\$2,900.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$2,950.00
Less security deposit	<u>- \$650.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$2,300.00

Conclusion

I hereby grant the Landlord an Order of Possession effective **2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby grant the Landlord a Monetary Order in the amount of **\$2,300.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: February 19, 2014

Residential Tenancy Branch

