



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for Unpaid Rent, a monetary Order for unpaid rent, compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on January 17, 2014 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the application. A Canada Post tracking number and receipt was provided as evidence of service.

These documents are deemed to have been served in accordance with section 89 and 90 of the Act; effective the 5th day after mailing. However the tenant did not appear at the hearing.

Preliminary Matters

The landlord proceeded with the claim for unpaid rent, loss of rent revenue, to retain the deposit and filing fees. The balance of the claim was withdrawn; the landlord has possession of the unit.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent and loss of rent revenue?

May the landlord retain the security deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on August 1, 2013; rent was \$950.00 per month due on the 1st day of each month. The tenancy agreement indicated the tenancy was a fixed term ending August 31, 2014. A security deposit was paid in the sum of \$475.00.

The landlord stated that on January 3, 2014 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of January 3, 2014 was served to the tenant by posting on the door. The tenant did not pay December 2013 and January 2014 rent owed; the landlord has claimed compensation in the sum of \$1,900.00.

The tenant vacated the rental unit on January 28, 2014.

The landlord was able to locate a new tenant effective February 1, 2014, but had to reduce the rent to \$875.00. The landlord was afraid they would lose another month's rent, so accepted a new tenancy at the lower rate. The landlord has claimed the loss of rent revenue to the end of August 2014, in the sum of \$75.00 per month.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the 3rd day after it is posted. Therefore, I find that the tenant received the Notice to end tenancy on January 6, 2014.

Section 90 of the Act stipulates that a document given personally is deemed served on the day of personal delivery. Therefore, I find that the tenant received the Notice to end tenancy on January 6, 2014.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on January 6, 2014, I find that the earliest effective date of the Notice is January 16, 2014.

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 to End Tenancy was January 26, 2014.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on January 26, 2014, pursuant to section 46 of the Act.

The tenant over held and vacated the unit on January 28, 2014.

I find, based on the affirmed testimony of the landlord and, in the absence of the tenant who was served with notice of this hearing, that the landlord is entitled to compensation in the sum of \$1,900.00 for unpaid December 2013 and January 2014 rent.

The landlord ended the tenancy as the tenant breached a fundamental term of the tenancy; payment of rent and, as suggested by Residential Tenancy Branch policy, the tenant was put on notice of the claim, served to the tenant effective January 26, 2014.

I find the landlord mitigated the claim, by locating a new occupant for the earliest possible date, February 1, 2014. I have accepted the landlord's submission that waiting for a higher rent could have resulted in greater loss of rent revenue. The landlord has claimed compensation that will allow them to be put in the same position if the tenant had not breached the tenancy agreement.

Therefore, pursuant to section 65 of the Act, that the landlord is entitled to compensation in the sum of \$600.00 for loss of rent revenue from February 2014 to August 2014, inclusive. This is the difference in rent being paid by the new occupant and what the tenant was required to pay as a term of her tenancy.

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the \$475.00 security deposit in partial satisfaction of the claim.

Therefore, the landlord has established a monetary claim, in the amount of \$2,550.00, which is comprised of \$1,900.00 in unpaid rent; \$600.00 for loss of rent revenue and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order for the balance of \$2,075.00. 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.

Conclusion

The landlord is entitled to a monetary Order for unpaid rent and loss of rent revenue.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 07, 2014

Residential Tenancy Branch

