



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Preliminary Issues

After careful consideration that the Landlord filed his application for Dispute Resolution on December 27, 2013, and his hearing was not scheduled until February 17, 2014, I find that this scheduling delay caused the Landlord to suffer a further two months of rent.

The Tenant appeared at the hearing and confirmed that she continued to occupy the rental unit and had not paid anything towards January or February 2014 rent. Accordingly, I amended the Landlord's application to include a request for money owed or compensation for damage or loss under the act regulation or tenancy agreement, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on December 27, 2013, by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?

2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on October 1, 2013 and was set to expire two years later. The Tenant is required to pay rent of \$850.00 on the first of each month and on or before October 1, 2013 the Tenant paid \$425.00 as the security deposit.

The Landlord testified that when the Tenant failed to pay the balance owing of \$50.00 from November 1, 2013 and the December 1, 2013 rent he personally served her a 10 Day Notice on December 15, 2013 for the \$900.00. The Tenant continues to occupy the rental unit and has only made two payments towards the outstanding rent: \$200.00 on January 7, 2014 and \$450.00 on January 14, 2014.

The Tenant testified and confirmed she has only made two payments but those payments were \$425.00 on January 2, 2014 and \$200.00 which was mailed to the Landlord on January 4, 2014. She said she continues to reside in the rental unit and she has not paid anything towards January or February 2014 rent because she was laid off from her job.

The Landlord stated that he wished to proceed with his application for all the unpaid rent and for possession of the unit as soon as possible.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant received the 10 Day Notice on December 15, 2013, and the effective date of the Notice is **December 25, 2013**, in accordance with section 46 of the Act.

The Tenant did not pay the rent in full and did not dispute the Notice within the required five days. Therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent of \$900.00 which was due December 1, 2013. The Tenant made two payments towards that rent in January 2014; however, there was disputed testimony as to the actual amount paid. To err on the side of caution I accept the Landlord's version of the amount paid as it was \$25.00 more than the amount stated by the Tenant. Therefore, I find the Tenant paid a total of \$650.00 (\$200.00 + \$450.00) in January 2014, towards the \$900.00 balance due which left an outstanding balance owing for December 2013 of \$250.00. Accordingly, I award the Landlord unpaid rent in the amount of **\$250.00**.

As noted above this tenancy ended **December 25, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for January and February 2014, not rent. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and then will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire months of January and February 2014, in the amount of **\$1,700.00** (2 x \$850.00).

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$1,950.00** (\$250.00 + \$1,700.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

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 17, 2014

Residential Tenancy Branch

