



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Heather Park Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Despite the landlord having sent the application for dispute resolution and notice of hearing to the tenant via registered mail on January 15, 2014, the tenant did not participate in the conference call hearing. A search of the registered mail tracking number on the Canada Post website shows that the tenant did not collect the registered letter. The tenant may not avoid service by failing to retrieve her registered letter. The landlord's agents testified that the tenant is still living in the unit as they can hear her dogs and know that her vehicles are parked in the parking area. I found that the tenant had been properly served with notice of the hearing and claim against her and the hearing proceeded in her absence.

At the hearing, the landlord asked to amend their claim to include a claim for loss of income for the month of February. I find that the tenant should reasonably have known that the landlord could not re-rent the unit while she was still living therein and I allow the amendment.

I note that the tenant filed an application on January 6 to dispute the notice to end tenancy which was at issue in this hearing. The hearing date to address the tenant's claim is February 17. As the tenant used a different last name to file that claim, the staff at the Residential Tenancy Branch was unable to cross the tenant's application with that of the landlord and arrange to have both matters heard on the same day. This decision is final and binding and while the February 17 hearing will proceed, the matter at issue for that hearing has been finally resolved in this decision and the Arbitrator who hears that application will be bound by this decision.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

Background and Evidence

The landlord's undisputed testimony is as follows. The tenancy began on or about June 1, 2012. Rent in the amount of \$840.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a \$437.50 security deposit and a \$437.50 pet deposit. The tenant failed to pay \$100.00 of her rent in the month of October and paid no rent whatsoever in the months of November and December. On December 31, the landlord served the tenant with a notice to end tenancy for unpaid rent (the "Notice") by posting the Notice to the door of the rental unit. The tenant further failed to pay rent in the months of January and February.

The landlord's agents testified that the tenant's claim to dispute the Notice indicates that she believes her rent was paid through labour performed on behalf of the landlord. The agents testified that the tenant last performed labour for them in August 2013 and although opportunities to work to pay her rent were offered, she chose not to avail herself of those opportunities.

Analysis

I accept the undisputed testimony of the landlord's agents. I find that there is insufficient evidence before me to prove that the tenant performed services to work off part or all of the rental arrears. I find that the tenant owed \$1,780.00 at the time the Notice was served and had not performed services to pay for that debt. I find that the landlord is entitled to recover the \$1,780.00 in rental arrears as well as \$840.00 in lost income for the month of January and \$420.00 in lost income for the first half of the month of February. I dismiss the claim for lost income for the latter half of February with leave to reapply in the event the landlord is unable to re-rent the unit. I further find that the landlord is entitled to recover the \$50.00 filing fee paid to bring this application for a total entitlement of \$3,090.00. I order that the landlord retain the \$875.00 in security and pet deposits in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2,215.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court. I note that the landlord also has \$100.00 in deposits for remote devices for the parking area. These deposits should be returned to the tenant if she returns the remote devices.

The tenant is deemed to have received the posted Notice on January 3, 2014, 3 days after it was posted on the door. Based on the above facts I find that the landlord is

entitled to an order of possession. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$2,215.00. The landlord will retain the security and pet deposits.

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 06, 2014

Residential Tenancy Branch

