



Dispute Resolution Services

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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.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Agent for the Landlord stated that on March 17, 2014 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord wishes to rely upon as evidence were personally served to the Tenant. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant stated that on March 20, 2014 he posted one document on the Landlord's door. The Agent for the Landlord stated that she did not receive any evidence from the Tenant in regards to this matter. As the Landlord did not acknowledge receipt of this document, it was not accepted as evidence for these proceedings.

I note that the document allegedly posted on the Landlord's door was a note to the Tenant in which the Landlord asked him to vacate the unit. As the document itself is not particularly relevant to the issues in dispute, there was no consideration given to adjourning the matter to provide the Tenant with the opportunity to re-serve the document.

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 and the Tenant agree that this tenancy began in 2013 and that the Tenant agreed to pay monthly rent of \$550.00 by the first day of each month. The Landlord contends that a \$250.00 security deposit was paid and the Tenant contends a \$300.00 security deposit was paid.

The Landlord and the Tenant agree that no rent was paid for February or March of 2014. The Landlord contends that no rent was paid for January and the Tenant contends that he paid his rent for January, in cash, on January 01, 2014. The parties agree that when the Tenant it was always paid in cash, although a receipt was never issued.

The Landlord stated that she posted a Ten Day Notice to End Tenancy for Unpaid Rent, which was dated March 07, 2014, on the Tenant's door on March 07, 2014. The Tenant stated that he did not receive the Notice to End Tenancy until March 19, 2014 when he received it as evidence for these proceedings.

The Notice to End Tenancy, which was submitted in evidence by the Landlord, does not declare the effective date of the Notice.

Analysis

I find that I have insufficient evidence to determine whether a security deposit of \$250.00 was paid, as the Landlord alleges, or whether a security deposit of \$300.00 was paid, as the Tenant alleges. I am satisfied, however, that at least \$250.00 was paid and that amount will be applied to any debt that relates to this tenancy. The Tenant retains the right to file an Application for Dispute Resolution seeking the return of the disputed amount of the security deposit.

On the basis of the undisputed evidence, I find that the Tenant did not pay the rent that was due on February 01, 2014 or March 01, 2014. As he is required to pay rent pursuant to section 26(1) of the *Residential Tenancy Act (Act)*, I find that the Tenant must pay \$1,100.00 in outstanding rent to the Landlord.

I find that the Landlord has submitted insufficient evidence to show that the Tenant did not pay rent for January and I therefore dismiss the claim for unpaid rent for January of 2014. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that it was not paid or that refutes the Tenant's testimony that it was paid.

There is a general legal principle that places the burden of proving that damage or loss occurred on the person who is claiming compensation for damage or loss. In regards to

the claim for unpaid rent, the burden of proving that rent was not paid in cash, as claimed by the Tenant, rests with the Landlord.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. Cash receipts help to establish when a rent payment has, or has not, been made. When a landlord regularly provides receipt for cash payments there is an expectation that a tenant will produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has not been made. When a tenant has previously made cash payments and has never been provided with a receipt, there is no expectation that the tenant will provide a receipt for a cash payment that has been allegedly made. In these circumstances the Landlord's failure to provide receipts for cash payments made during this tenancy has significantly impaired her ability to prove that the Tenant did not pay his rent in cash in January of 2014.

Section 46(1) of the *Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the rent is due by giving a notice to end tenancy. Section 46(2) of the *Act* stipulates that a notice to end tenancy under this section must comply with section 52 of the *Act*. Section 52(c) of the *Act* stipulates that to be effective a notice to end tenancy must state the effective date of the notice.

In the circumstances before me I find that the Notice to End Tenancy that is the subject of this dispute resolution proceeding does not declare the effective date of the Notice. I therefore find that the Notice was not effective, as the Landlord did not comply with section 52(c) of the *Act*. As the Notice to End Tenancy that is the subject of these proceedings is not effective, I dismiss the Landlord's claim for an Order of Possession.

I find that the Landlord's application has some 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

The Landlord has established a monetary claim, in the amount of \$1,150.00, which is comprised of \$1,100.00 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 \$250.00 security deposit, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$900.00. 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.

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: March 27, 2014

Residential Tenancy Branch

