



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on December 03, 2013 he personally served the Application for Dispute Resolution and the Notice of Hearing to the Tenant. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

The Landlord submitted documents to the Residential Tenancy Branch on January 14, 2014 and March 21, 2014. The Agent for the Landlord stated that on March 20, 2014 he personally delivered copies of these documents to the Tenant's father at the father's residence. He stated that he had the father's address at the start of the tenancy and that when the tenancy ended the Tenant informed him that he could use this address as a forwarding address.

Rule 3.5(a) of the Residential Tenancy Branch Rules of Procedure stipulate that evidence not served when the Application for Dispute Resolution is filed must be served "as soon as possible" and at least five days before the dispute resolution proceeding. As all of the documents served on March 20, 2014 are dated prior to January 14, 2014, I find that they were not served "as soon as possible". To comply with the five day service requirement, documents that were served as evidence for a dispute resolution proceeding on March 25, 2014 must be served to the other party by March 19, 2014. As the documents submitted to the Residential Tenancy Branch on January 14, 2014 and March 21, 2014 were not served to the Tenant in accordance with rule 3.5(1) of the Residential Tenancy Branch Rules of Procedure, I refuse to accept them as evidence for these proceedings. My decision to refuse the evidence was influenced, in part, by the absence of evidence to show that the Tenant has actually received the documents that was delivered to this service address.

Preliminary Matter

At the hearing the Agent for the Landlord applied to amend the Application for Dispute Resolution to include compensation for rekeying the rental unit and cleaning.

I declined the request to amend the Landlord's Application for Dispute Resolution, as the Landlord did not amend the Application for Dispute Resolution in accordance with Rule 2.5 of the Residential Tenancy Branch Rules of Procedure. Rule 2.5 stipulates that a copy of the amended application must be served on the other party at least five days before the scheduled date of the dispute resolution hearing.

In these circumstances the Landlord did not actually amend the Application for Dispute Resolution. Rather, the Landlord served receipts for cleaning and key replacement, from which the Tenant was to interpret that the Landlord was claiming compensation for these items. Even if the Tenant did receive the documents that were delivered to his father's residence on March 20, 2014, I find that the information did not sufficiently inform the Tenant that the Landlord was amending the claim to include these items.

I find that the late service of the documents and the absence of a clearly amended Application for Dispute Resolution made it difficult for the Tenant to prepare an adequate response to any claims not outlined in the original Application for Dispute Resolution. I therefore find that it would be prejudicial to the Tenant to allow the amendment.

Issue(s) to be Decided

Is the Landlord entitled to compensation for loss of revenue?

Background and Evidence

The Agent for the Landlord stated that this tenancy began on November 04, 2012 and that the Tenant was required to pay monthly rent of \$625.00 by the first day of each month.

The Agent for the Landlord stated that this tenancy was the subject of a dispute resolution proceeding on November 27, 2013 and that the Landlord was granted an Order of Possession at the conclusion of that hearing, which was effective two days after the Order was served upon the Tenant.

The Agent for the Landlord stated that the Order of Possession was served to the Tenant on November 29, 2013 or November 30, 2013. He stated that the rental unit was not vacated until December 08, 2013; that he began advertising the rental unit on two popular websites on December 10, 2013; and that a new tenant was located for January 01, 2014.

Analysis

On the basis of the undisputed evidence, I find that on November 29, 2013 or November 30, 2013 the Tenant was personally served with an Order of Possession that required the Tenant to vacate the rental unit by December 01, 2013 or December 02, 2013. On the basis of the undisputed evidence, I find that the Tenant did not vacate the rental unit until December 08, 2013.

As the Tenant did not vacate the rental unit until December 08, 2013, I find that he is obligated to pay rent, on a per diem basis, for the days he remained in possession of the rental unit. I find that the Tenant must compensate the Landlord for the eight days in December that he remained in possession of the rental unit, at a daily rate of \$20.16, which equates to \$161.28.

I find that the continued occupancy of the rental unit made it difficult, if not impossible, for the Landlord to find new tenants for the remainder of December, although the Landlord made reasonable efforts to do so. I therefore find that the Tenant must compensate the Landlord for the loss of revenue that was experienced for the remainder of December of 2013, which was \$463.72.

I find that the Landlord's application has 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 \$675.00, which is comprised of \$625.00 in unpaid rent/lost 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 amount \$675.00. 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 25, 2014

Residential Tenancy Branch

