



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MND, MNSD, 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, 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 March 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.

These documents are deemed to have been served in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

Preliminary Matters

The landlord withdrew the application related to damage. The landlord believes the tenant vacated during the first week of April and that the unit is damaged. The landlord has waited to obtain legal possession and will then assess the unit for damage. The landlord has leave to reapply within the legislated time-frame.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order?

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 July 1, 2013; rent is \$900.00 per month, due on the 1st day of each month. A security deposit in the sum of \$450.00 was paid.

The landlord provided affirmed testimony that on February 28, 2014 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of March 10, 2014 was served by posting to the tenant's door at 12:54 p.m. with a friend present as a witness. The witness, R.H., signed a proof of service document, submitted as evidence, confirming service occurred. The landlord provided a photograph of the Notice that had been posted to the door.

The landlord supplied a copy of a Canada Post registered mail receipt to confirm that the Notice was also served via registered mail to the rental unit address.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$900.00 within 5 days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within 5 days.

The tenant did not pay February, March or April 2014 rent. The landlord has claimed compensation in the sum of \$2,700.00 in unpaid rent.

The tenant was last seen at the unit between April 5 and 7, 2014.

Analysis

Section 90 of the Act stipulates that a document that is sent by registered mail is deemed to be received on the 5rd day after it is posted. Therefore, I find that the tenant received the Notice to end tenancy on March 5, 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 March 5, 2014, I find that the earliest effective date of the Notice is March 15, 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 March 15, 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 March 15, 2014, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights; therefore, pursuant to section 46(5) and 44(a)(i) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; March 15, 2014.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$1,800.00 for February and March 2014, inclusive, and that the landlord is entitled to compensation in that amount. The tenant failed to vacate the unit by the effective date of the Notice and over-held into April, resulting in a loss of rent up until at least April 7, 2014.

Residential Tenancy Branch policy suggests a tenant is not liable to pay rent after a tenancy agreement has ended pursuant to section 44 of the Act; however if a tenant remains in possession of the premises (over-holds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises. The landlord is confident that the tenant has vacated, but preferred to receive an Order of possession. Therefore, I find that the landlord is entitled to a pro-rated sum of April rent owe to the 7th, in the sum of \$29.56 per day; \$206.92. As the landlord has not claimed compensation for lost revenue, I decline to consider whether the landlord is entitled to compensation for any period after April 7, 2014.

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 security deposit in partial satisfaction of the claim.

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord has established a monetary claim, in the amount of \$2,006.92, which is comprised of unpaid February and March rent, per diem rent to April 7, 2014 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 \$1,606.92. 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 an Order of possession and monetary Order for unpaid rent

The landlord has leave to reapply requesting 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: May 01, 2014

Residential Tenancy Branch

