



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, 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, and to recover the fee for filing an Application for Dispute Resolution.

The Landlord stated that on April 09, 2014 the Application for Dispute Resolution and the Notice of Hearing, were sent to each Tenant at the rental unit, via registered mail. The Landlord cited two Canada Post tracking numbers that corroborate this statement. The Tenant in attendance at the hearing stated that she received the Application for Dispute Resolution and the Notice of Hearing in the mail and she believes her co-tenant also received these documents in the mail.

In the absence of evidence to the contrary, I find that these documents have been served to each Tenant in accordance with section 89 of the *Residential Tenancy Act* (Act); however one of the Tenants did not appear at the hearing.

On April 04, 2014 the Landlord submitted two documents to the Residential Tenancy Branch. He stated that he mailed copies of these documents to each Tenant when he mailed the Application for Dispute Resolution on April 09, 2014. The Tenant stated that she does not recall receiving these two documents, although she does not have the package she received from the Landlord with her, and she cannot be certain.

On the basis of the Landlord's testimony that the documents were mailed to the Tenant, I find that these documents were served in accordance with section 88 of the Act. I find that this testimony is more compelling than the testimony of the Tenant, who is uncertain if she received the documents, as the Landlord is certain they were mailed.

Issue(s) to be Decided:

Is the Landlord entitled to an Order of Possession for unpaid rent and a monetary Order for unpaid rent?

Background and Evidence:

The Landlord and the Tenant agree that this tenancy began on September 01, 2013; that the Landlord and the two Tenants have a verbal tenancy agreement; and that the rent of \$1,000.00 is due by the first day of each month.

The Landlord stated that \$500.00 in rent was paid for December of 2013; that no rent was paid for January of 2014; that no rent was paid for February of 2014; that no rent was paid for March of 2014; that no rent was paid for April of 2014; and that no rent was paid for May of 2014. The Landlord applied to amend the Application for Dispute Resolution to include unpaid rent for April and May of 2014.

The Tenant stated that she paid \$500.00 in rent for December of 2013; that she gave her co-tenant \$500.00 in rent for February of 2014; that she did not pay any rent directly to the Landlord in 2014; and that she does not know if her co-tenant paid rent after December 01, 2013.

The Witness for the Landlord stated that he is acting as a real estate agent for the Landlord in regards to this property and that on December 23, 2013 he posted a Ten Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit. The Notice, which was submitted as evidence, declares that the rental unit must be vacated by January 03, 2014. The Notice declared that the Tenant owed \$500.00 in rent that was due on December 01, 2013.

The Tenant stated that she did not receive this Notice to End Tenancy.

Analysis

On the basis of the undisputed evidence, I find that the Tenants entered into a tenancy agreement with the Landlord that requires the Tenants pay monthly rent of \$1,000.00 by the first day of each month.

On the basis of the undisputed evidence, I find that only \$500.00 in rent was paid for December of 2013 and that the Tenants owe \$500.00 in rent for December. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenants must pay \$500.00 in outstanding rent to the Landlord.

I find it reasonable for the Tenants to conclude that the Landlord would be seeking a monetary Order for all the rent that is currently due, including rent that came due after the Landlord filed his Application for Dispute Resolution. I therefore amend this Application for Dispute Resolution to include a claim for unpaid rent from April and May of 2014.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. On the basis of the testimony of the Witness for the Landlord, I find that a Ten Day

Notice to End Tenancy was posted at the rental unit. I find this testimony is credible, as the Witness is not directly involved in this dispute and his evidence was forthright and direct.

In reaching this conclusion I placed little weight on the Tenant's testimony that she did not receive the Notice that was posted on the door. I find it entirely possible that her co-tenant located the Notice and simply neglected to inform the Tenant of the Notice.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that at least one of the Tenants received the Notice to End Tenancy on December 26, 2013.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on December 26, 2013, I find that the earliest effective date of the Notice was January 05, 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 January 05, 2014.

Section 46 of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenants exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenants accepted that the tenancy has ended. On this basis I find that the Landlord is entitled to an Order of Possession.

As the Tenants did not vacate the rental unit on January 05, 2014, I find that the Tenants are obligated to pay rent, on a per diem basis, for the days they remained in possession of the rental unit. As they have already been ordered to pay rent for the period between December 23, 2013 and December 31, 2013, I find that the Landlord has been fully compensated for that period.

I also find that the Tenants must compensate the Landlord for the months of January, February, March, and April of 2014, as they occupied the rental unit during those months. I find that the Tenant must pay \$4,000.00 for these months, which is the equivalent of rent for four months.

I also find that the Tenants must compensate the Landlord for 27 days in May that they occupied the rental unit, at a daily rate of \$32.26, which equates to \$871.02. I am unable to award compensation for the remainder of May as I cannot be certain that the

Tenant will not vacate the rental unit prior to May 28, 2014 and the Landlord has not applied for compensation for lost revenue.

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

I grant the Landlord an Order of Possession that is effective two days after it is served upon 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 \$5,421.02, which is comprised of \$5,371.02 in unpaid rent 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 of \$5,421.02. 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: May 27, 2014

Residential Tenancy Branch

