



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. At the outset of the hearing the Agent for the Landlord withdrew the application for an Order of Possession, as the rental unit was vacated on April 27, 2014.

In the details of dispute section of the Application for Dispute Resolution, the Landlord clearly indicates that the Landlord is seeking compensation for late payment of rent. I therefore find it appropriate to consider this claim at this hearing.

The Agent for the Landlord stated that on April 04, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were sent to each Tenant at the rental unit, via registered mail. The Landlord submitted a Canada Post receipts that corroborate this. 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 neither Tenant appeared at the hearing.

Issue(s) to be Decided:

Is the Landlord entitled to a monetary Order for unpaid rent?

Background and Evidence:

The Agent for the Landlord stated that this tenancy began on May 15, 2013 and that the Tenant agreed to pay monthly rent of \$1,020.00 by the first day of each month. The Agent for the Landlord stated that the Tenant still owes \$505.00 in rent from March of 2014 and that no rent was paid for April of 2014.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of March 05, 2014, was posted at the rental unit on March 05, 2014.

The Landlord submitted a copy of the tenancy agreement, which requires the Tenant to pay a \$20.00 fee whenever the rent is not paid when it is due. The landlord is seeking compensation for late fees from March and April of 2014.

Analysis

Based on the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,020.00 by the first day of each month. Based on the undisputed evidence, I find that the Tenant did not pay \$505.00 in rent that was due on March 01, 2014. As the Tenant did not pay rent when it was due, I find that the Tenant owes \$505.00 in rent for March of 2014.

As the Tenant did not pay her rent when it was due on March 01, 2014 and the tenancy agreement requires the Tenant to pay a fee of \$20.00 whenever rent is not paid when it is due, I find that the Landlord is entitled to a late fee of \$20.00 for the month of March of 2014.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. Based on the undisputed evidence, I find a Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on March 05, 2014. This Notice declared that the Tenant must vacate the rental unit by March 05, 2014.

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 the Tenant received the Notice to End Tenancy on March 08, 2014.

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 March 08, 2014, I find that the earliest effective date of the Notice is March 18, 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 18, 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 Tenant exercised either of these

rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy ended on March 18, 2014.

As the Tenant did not vacate the rental unit on March 18, 2014, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay rent for the period between March 18, 2014 and March 31, 2014, I find that the Landlord has been fully compensated for that period. I also find that the Tenant must compensate the Landlord for the 27 days in April that the Tenant remained in possession of the rental unit, at a daily rate of \$34.00, which equates to \$918.00.

I am unable to award compensation for lost revenue from April of 2014, as the Landlord has not clearly informed the Tenant that the Landlord is seeking compensation for lost revenue.

As the Tenant was required to vacate the rental unit by March 18, 2014, I find that the Tenant was not required to pay rent on April 01, 2014. As the Tenant was not required to pay rent on April 01, 2014, I find that the Tenant is not obligated to pay a "late fee" for not paying rent on April 01, 2014.

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 \$1,443.00, which is comprised of \$1,423.00 in unpaid rent and \$20.00 for late fees. Based on these determinations I grant the Landlord a monetary Order for the amount of \$1,443.00. 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: May 26, 2014

Residential Tenancy Branch

