



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, CNR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to cross applications.

On May 20, 2014 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord with the initials "D.A." stated that on May 20, 2014 the Landlord's Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were personally served to the Tenant. The Tenant acknowledged receipt of most of these documents and those were accepted as evidence for these proceedings.

The Tenant stated that she did not receive the Residential Tenancy Branch fact sheet that explains how/when to serve evidence when she received the aforementioned documents. The Landlord with the initials "D.A." stated that the Tenant was served all of the documents provided by the Residential Tenancy Branch, including this fact sheet.

On May 12, 2014 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent.

The Tenant stated that on May 15, 2014 the Tenant's Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents.

On June 09, 2014 and June 18, 2014 the Landlord submitted numerous documents and photographs to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord with the initials "D.A." stated that these documents were

personally served to the Tenant on June 18, 2014. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Landlord with the initials "D.A." stated that an amended Application for Dispute Resolution was also served to the Tenant on June 18, 2014, in which the Landlord is claiming compensation for a damaged garage door. The Tenant stated that she understood the Landlord was claiming compensation for the door and that claim will be considered at these proceedings.

On June 24, 2014 the Tenant submitted several photographs to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were served to the Landlord, via email, on June 24, 2014. The Landlord acknowledged receipt of these photographs and they were accepted as evidence for these proceedings.

The Tenant submitted numerous other documents to the Residential Tenancy Branch on a variety of different dates. She stated that none of these documents have been served to the Landlord. As they were not served to the Landlord, they were not accepted as evidence for these proceedings.

The Tenant requested an adjournment for the purpose of serving the documents that she has not yet served to the Landlord. She stated that she was unaware of the procedures for serving evidence, as the Landlord had not served her with the Residential Tenancy Branch fact sheet with the Landlord's Application for Dispute Resolution.

The Tenant's application for an adjournment was denied. Even if I accepted the Tenant's testimony that she did not receive the Residential Tenancy Branch fact sheet which addresses service of evidence, when she received the Landlord's Application for Dispute Resolution, I am satisfied that she was provided with this fact sheet when she filed her own Application for Dispute Resolution. I therefore find that she had access to this information.

When asked why she opted to serve photographs to the Landlord but did not serve any of her other documents to the Landlord, the Tenant stated that she was unable to do so because of work commitments. In my view, the fact that the Tenant served some evidence to the Landlord indicates she was aware that her evidence should be served to the other party. I therefore find that her decision not to serve all of her evidence to the Landlord was not related to a misunderstanding regarding the need to serve evidence.

In determining that the matter should not be adjourned, I was also influenced by the Tenant's inability to describe any documents she would have submitted, that have not already been accepted as evidence, that are relevant to the issues in dispute at these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me. The Tenant was prevented from introducing evidence that was not relevant to the issues in dispute at this hearing, including repairs she has made to the siding on the rental unit and "harassment". The Tenant was given the opportunity to speak to any of the documents she submitted as evidence, providing they were relevant to the issues in dispute at these proceedings.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent be set or aside or should the Landlord be granted an Order of Possession?

Is the Landlord entitled to a monetary Order for unpaid rent and damage to a garage door, and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that the most recent tenancy agreement was for a fixed term between January 01, 2014 and December 31, 2014. The parties agree that the tenancy agreement requires the Tenant to pay monthly rent of \$1,500.00 by the first day of each month.

The Landlord and the Tenant agree that the Tenant paid a security deposit of \$750.00 for this rental unit in December of 2012.

The Landlord and the Tenant agree that the Tenant paid \$300.00 in rent for May of 2014 and that no rent has been paid for June or July of 2014. The Tenant stated that she has no legal right to withhold the rent.

The Landlord and the Tenant agree that a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of May 19, 2014, personally served to the Tenant on May 09, 2014.

The Landlord is seeking compensation, in the amount of \$963.90, for replacing a garage door.

The Landlord with the initials "D.A." stated that the garage door had one dent on the exterior of the door at the start of the tenancy. The Landlord submitted a copy of a condition inspection report, which was completed on December 18, 2012, which indicates there was one dent in the door on that date. The Tenant stated that there was one large dent and approximately ten small dents on the exterior of the garage door.

The Landlord with the initials "D.A." stated that the garage door was dented in many places during the tenancy, as a result of a hockey puck striking the door. The Tenant agrees that the door was dented on at least one occasion during the tenancy. She

stated that she believes this is normal wear and tear and that she has no intentions of repairing the damage.

The Landlord submitted several photographs of the garage door, which show the door has been damaged in several places. The damage is consistent with the damage that would be expected when a hockey puck strikes the door.

The Tenant submitted several photographs of the interior of the garage door. These photographs are of very poor quality, although it does appear that there are some minor dents on the interior of the door.

The Landlord submitted an estimate for replacing the garage door, in the amount of \$963.90.

The Landlord submitted a copy of an inspection report that was completed after this tenancy began, on which the Tenant has initialed an entry that indicates the garage door was damaged by hockey pucks.

The Landlord submitted a copy of a tenancy agreement that was signed on December 10, 2013, in which the Tenant has signed beside an entry that indicates she takes responsibility for replacing the garage door.

Analysis

On the basis of 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 \$1,500.00 by the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent when it is due.

On the basis of the undisputed evidence, I find that the Tenant did not pay \$1,200.00 in rent when it was due on May 01, 2014. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,200.00 in outstanding rent for May of 2014.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days, by providing proper written notice. On the basis of the undisputed evidence, I find that the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was personally served to the Tenant on May 09, 2014. As the Tenant did not pay rent when it was due; the Landlord served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent; and the rent for May remains outstanding, I find that the Landlord has the right to end this tenancy in accordance with section 46 of the *Act*. I therefore dismiss the Tenant's application to set aside this Notice to End Tenancy and I grant the Landlord an Order of Possession.

As the Tenant did not vacate the rental unit on the effective date of the Notice, 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 May 01, 2014 and May 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 month of June, as the Tenant remained in possession of the rental unit for that month.

The Landlord is seeking compensation for unpaid rent for the month of July. I grant that request and, as such, will make the Order of Possession effective on July 31, 2014.

I favour the testimony of the Landlord, who stated that the garage door had one dent on the exterior of the door at the start of the tenancy, over the testimony of the Tenant, who stated that it had approximately 11 dents on the exterior at the start of the tenancy. I favoured the testimony of the Landlord because it was corroborated by the condition inspection report that was completed on December 18, 2012.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report completed that is signed by both parties is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. As the condition inspection report indicates there was only one dent in the door and the Tenant has not submitted evidence that corroborates her testimony that there were many dents, I find that I must rely on this report.

On the basis of the photographs submitted in evidence by the Landlord, which show numerous dents on the exterior of the garage door that are consistent with a hockey puck striking the door, I find that the garage door was damaged during the tenancy. I find that this damage far exceeds "normal wear and tear", which occurs during normal use. Striking a door repeatedly with a hockey puck is not normal use. I note that the Landlord is not seeking compensation as a result of dents to the interior of the door, so I have placed no weight on the photographs of the interior of the door.

My conclusion that the door was damaged during the tenancy is supported by the condition inspection report that was completed after this tenancy began, on which the Tenant has initialed an entry that indicates the garage door was damaged by hockey pucks, and by the tenancy agreement that was signed on December 10, 2013, in which the Tenant has signed beside an entry that indicates she takes responsibility for replacing the garage door.

Section 37 of the *Act* stipulates that a tenant must leave the rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy. As the Tenant has clearly stated that she does not intend to repair the damaged garage door, I find it reasonable for me to consider the claim for repairing the damaged door at these proceedings. As the Tenant has damaged the door and has indicated she does not intend to repair it, I find that she must pay the Landlord the \$963.90 it will cost to repair it.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on July 31, 2014. 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 \$5,213.90, which is comprised of \$4,200.00 in unpaid rent, \$963.90 for repairing the garage door, 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 keep the Tenant's security deposit of \$750.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$4,463.90. 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: July 04, 2014

Residential Tenancy Branch

