



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax Little Oak Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled 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, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution. At the outset of the hearing the Agent for the Landlord withdrew the application for an Order of Possession.

The Agent for the Landlord stated that on June 27, 2014 the Application for Dispute Resolution and the Notice of Hearing were mailed to the Tenant at the rental unit. The Landlord submitted a Canada Post receipt that corroborates this statement. 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 Agent for the Landlord stated that these documents were not returned to the Landlord so I find it reasonable to conclude that they have been received by the Tenant.

On July 12, 2014 the Landlord submitted numerous documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Agent for the Landlord stated that these documents were posted on the door of the rental unit on July 12, 2014 however he believes the Tenant had vacated the rental unit by that date. As the Tenant was not residing at the rental unit on July 12, 2014, I find that these documents have not been served to the Tenant in accordance with section 88 of the *Act*.

As the Landlord's evidence was not served to the Tenant in accordance with the *Act*, it was not accepted as evidence for these proceedings. This decision was based on the testimony of the Agent for the Landlord.

Issue(s) to be Decided

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

Background and Evidence

The Agent for the Landlord stated that this tenancy began on November 01, 2013; that the Tenant was required to pay monthly rent of \$6250.00 by the first day of each month; and that the Tenant paid a security deposit of \$312.50.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of June 06, 2014, was posted on the door of the rental unit on May 27, 2014. He stated that when this Notice was posted the Tenant owed \$455.00 in rent.

The Agent for the Landlord stated that the Tenant vacated the rental unit sometime after June 27, 2014 and July 02, 2014. He stated that on June 04, 2014 the Tenant paid the outstanding rent for May; however he did not pay any rent for June. The Landlord is seeking unpaid rent for June.

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 \$625.00 by the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

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 Tenant did not pay all of the rent that was due by May 01, 2014 and that a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on May 27, 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 May 30, 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 May 30, 2014, I find that the earliest effective date of the Notice was June 09, 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 June 09, 2014.

Section 46 of the *Act* stipulates that a Tenant has five (5) days from the date of receiving the Notice to End 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 and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy ended on the effective date of the Notice.

As the Tenant did not vacate the rental unit by June 09, 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. I find that the Tenant fundamentally breached the tenancy agreement when he did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when the Tenant did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that the continued occupancy of the rental unit made it difficult, if not impossible, for any portion of June. I therefore find that the Tenant owes rent for the entire month of June of 2014, in the amount of \$625.00.

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

The Landlord has established a monetary claim, in the amount of \$675.00, which is comprised of \$625.00 in unpaid rent 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 \$312.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$362.50. 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: August 25, 2014

Residential Tenancy Branch

