



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 has requested an Order of possession for unpaid rent, a monetary Order for unpaid rent, loss of rent revenue, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on July 5, 2014 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail to the rental unit address noted on the application. A Canada Post tracking number was provided as evidence of service. The mail was not returned to the landlord.

These documents are deemed to have been served on the 5th day after mailing, in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

Preliminary Matters

The landlord submitted 5 pages of evidence to the Residential Tenancy Branch on August 26, 2014. That evidence was sent to the tenant via registered mail on August 26, 2014. The landlord was unable to establish the date that mail was received by the tenant. Therefore, I determined that the evidence is deemed served, in accordance with section 90 of the Act, effective August 31, 2014. As the evidence was not given to the tenant at least fourteen days prior to the hearing, as required by the Rules of Procedure, the evidence was set aside.

As rent is the most basic term of a tenancy the application was amended to include a claim for loss of rent revenue to September 2014, inclusive.

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 for unpaid rent and rent revenue?

May the landlord retain the security deposit paid by the tenant?

Background and Evidence

The tenancy commenced on July 9, 2012; a copy of the tenancy agreement was supplied as evidence. A security deposit in the sum of \$383.00 was paid.

The tenant pays subsidized rent, in accordance with a BC Housing agreement. At the start of the tenancy the subsidized rent was \$225.00, due on or before the 1st day of each month. Annual asset declaration reports allow the landlord to make required rent adjustments. At the start of the tenancy the tenant was given a rent subsidy calculation, showing the market rent as \$1,200.00 per month.

In February 2013 the tenant was sent a letter informing her rent was increasing to \$496.00 effective March 1, 2013. The increase was based on the tenant's income.

The landlord has claimed the following in unpaid rent:

December 2013	219.44
January 2014	352.72
February 2014	496.00
March 2014	352.72
April 2014	352.72
May 2014	352.72
June 2014	352.72
July 2014	352.72
August 2014	352.72
September 2014	352.72
TOTAL	3,537.20

This sum differs from included on the landlord's application; \$3,760.76. The landlord confirmed they are claiming only the difference between the subsidized rent owed and that paid each month by the tenant.

The landlord could not explain why the tenant has been paying \$143.28 in some of the months. The tenant has not responded to the landlord's repeated attempts to communicate with her.

The landlord stated that on June 6, 2014 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of June 21, 2014, was served by regular mail to the rental unit address.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,335.79 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.

No rent arrears have been paid.

Analysis

Section 90 of the Act stipulates that a document given by mail is deemed served on the 5th day after mailing. Therefore, I find that the tenant received the Notice to end tenancy on June 11, 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 June 11, 2014, I find that the earliest effective date of the Notice is June 21, 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 June 21, 2014, pursuant to section 46 of the Act. Notice of this hearing has also informed the tenant of the landlord's intention to end the tenancy.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice ending tenancy to either pay all of 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) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; June 21, 2014.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$3,537.20 from December 2013 to September 2014 inclusive and that the landlord is entitled to compensation in that amount.

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 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 \$383.00 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.

Based on these determinations I grant the landlord a monetary Order for the balance of \$3,204.20. 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 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: September 05, 2014

Residential Tenancy Branch

