



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 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, utilities and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on September 11, 2014 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the application. A Canada Post tracking number was provided as evidence of service sent to the rental unit address.

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; where she could have requested more time to prepare, if required.

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 utilities?

Background and Evidence

The tenant moved into the unit without permission and the parties then reached agreement that rent would be paid commencing in May 2014.

The landlord told the tenant rent was \$950.00 per month, due on the 1st day of each month. A tenancy agreement was not signed. It was not until July 2014 that the landlord received some cheques issued by the government, on behalf of the tenant.

The landlord received a security deposit in the sum of \$187.50.

The tenant owes \$690.00 for July and did not pay any rent in August or September, 2014.

The landlord stated that on August 4, 2014 a 10 day Notice ending tenancy for unpaid rent or utilities, which had only a month and year indicated as the effective date, was served by placing the Notice in the tenant's mail box. Service occurred in the afternoon.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$690.00 July rent and \$950.00 August rent 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.

The application indicated the Notice was personally served on August 1, 2014. The landlord said English is his 2nd language and that his spouse completed the application. His spouse did not understand that the Notice had been given on August 4th, 2014.

The landlord provided copies of a number of utility bills; no evidence of any demand letter, for payment, was provided.

The total claim made, from the sum indicated on the application, was \$2,590.00 rent and the balance of \$210.68 was for utility costs.

Analysis

Based on the affirmed testimony of the landlord I find that the tenancy commenced in May 2014 and that rent was \$950.00 per month, due on the 1st day of each month.

Section 90 of the Act stipulates that a document that is placed in the mail slot is deemed to be received on the 3rd day after it is posted. Therefore, I find that the tenant received the Notice to end tenancy on August 7, 2014.

Director's orders: notice to end tenancy

68 (1) *If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that*

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and*
- (b) in the circumstances, it is reasonable to amend the notice.*

(2) Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,

- (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or*
- (b) set aside or amend a notice given under this Act that does not comply with the Act.*

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 August 7, 2014, I find that the earliest effective date of the Notice is August 17, 2014. I find it is reasonable to find that the tenant would have known that within 10 days of receipt of the Notice the Notice would be effective unless the rent was paid within 5 days. Therefore, I find that the Notice is amended to reflect an effective date of the Notice was August 17, 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 August 17, 2014, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice ending 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; 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; August 17, 2014.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$690.00 in July and \$950.00 for each August and September, 2014 totalling \$2,590.00 and that the landlord is entitled to compensation in that amount.

In the absence of a written tenancy agreement setting out the terms for utility payment and any evidence of written demand for payment, I find that the claim for utility costs is dismissed.

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 \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Section 72(2) of the Act provides a dispute resolution officer with the ability to deduct any money owed by a tenant to a landlord, from the deposit due to the tenant. Therefore, I find that the landlord may retain the tenant's security deposit in the amount of \$187.50 in partial satisfaction of the monetary 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 \$2,452.50. 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.

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.

The claim for utility costs is dismissed.

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 19, 2014

Residential Tenancy Branch

