



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to cross applications.

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, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for more time to apply to set aside a Notice to End Tenancy for Unpaid Rent and to set aside a Notice to End Tenancy for Unpaid Rent.

The Agent for the Landlord stated that on November 21, 2014 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord wishes to rely upon as evidence were sent to the Tenant at the rental unit, via registered mail. 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.

Preliminary Matter

The hearing was scheduled to proceed at 1:00 p.m. on December 18, 2014 and by 1:14 p.m. the Tenant had not appeared. I find that the Tenant failed to diligently pursue her Application for Dispute Resolution and I therefore dismiss her Application without leave to reapply.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent?

Background and Evidence

The Landlord stated that this tenancy began on June 04, 2014; that the Tenant agreed to pay monthly rent of \$1,050.00 by the first day of each month; and that the Tenant is still residing in the rental unit.

The Landlord has claimed unpaid rent of \$250.00 for June; \$250.00 for July; \$250.00 for August; \$650.00 for September; \$650.00 for October; and \$1,050.00 for December. At the hearing the Landlord stated that these amounts are still outstanding. This totals \$3,100.00, although on the Application for Dispute Resolution the Landlord has mistakenly calculated the total to be \$3,000.00.

The Landlord stated that he forgot to include a claim for rent for November, \$650.00 of which has not been paid. He applied to amend the Application for Dispute Resolution to include a claim for unpaid rent from November.

The Landlord stated that on November 06, 2014 his agent posted a Ten Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit, which had a declared effective date of November 16, 2014. No evidence was submitted from the agent who reportedly posted the Notice to End Tenancy.

Both the Landlord and the Tenant submitted a copy of the Notice to End Tenancy. In the Tenant's Application for Dispute Resolution the Tenant declared that she received the Notice to End Tenancy on November 13, 2014.

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 \$1,050.00 by the first day of each month.

The Landlord's application to amend the Application for Dispute Resolution to include a claim for unpaid rent from November is denied. I find it entirely possible that the Tenant did not attend this hearing because she agrees that she owes rent in the amounts claimed in the Landlord's Application for Dispute Resolution. Given that the Landlord has not informed the Tenant that he is claiming compensation for unpaid rent from November, I find it inappropriate to amend the Application in the absence of the Tenant.

In determining that the Application for Dispute Resolution should not be amended to include rent for November I was influenced, in part, by the fact that the Notice to End Tenancy declares that \$1,950.00 in rent was due on November 01, 2104. This amount does not appear to reflect the \$650.00 in unpaid rent from November, which supports my conclusion that the Tenant may believe that rent for November has been paid in full.

On the basis of the undisputed evidence, I find that the Tenant did not pay \$250.00 of the rent due for June; \$250.00 of the rent due for July; \$250.00 of the rent due for

August; \$650.00 of the rent due for September; and \$650.00 of the rent due for October. As the Tenant is required to pay rent when it is due, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$2,050.00 in outstanding rent to the 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 testimony of the Tenant, I find that the Tenant received the Ten Day Notice to End Tenancy on November 13, 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 acknowledged receiving the Notice on November 13, 2014, I find that the earliest effective date of the Notice was November 23, 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 November 23, 2014.

As the Tenant did not pay all of the rent that was due by November 01, 2014 and the Tenant was served with a Ten Day Notice to End Tenancy for Unpaid Rent, I find that the Landlord has the right to end this tenancy in accordance with section 46 of the *Act*. I therefore grant the application for an Order of Possession.

As the Tenant did not vacate the rental unit in November of 2014, I find that the Tenant is obligated to pay rent, on a per diem basis, for the 18 days in December that the Tenant remained in possession of the rental unit for those days, at a daily rate of \$33.87, which equates to \$609.66.

I find that the Tenant fundamentally breached the tenancy agreement when she 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 makes it difficult, if not impossible for the Landlord to find new tenants for the remainder of December. I therefore find that the Tenant must compensate the Landlord for the loss of revenue it can be reasonably expected to experience between December 19, 2014 and December 31, 2014, which is \$440.34.

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 two days after it is served upon 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.

The Landlord has established a monetary claim, in the amount of \$3,150.00, which is comprised of \$3,100.00 in unpaid rent/lost revenue and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$3,150.00. 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: December 19, 2014

Residential Tenancy Branch

