



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, CNR, MNR, MNSD, 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 or Utilities, a monetary Order for unpaid rent and utilities, and to recover the fee for filing an Application for Dispute Resolution. The Landlord stated that on January 14, 2015 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Tenant's wife. The Tenant stated that he received these documents from his wife on, or about, January 14, 2015. I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel a Notice to End Tenancy for Unpaid Rent or Utilities, to recover his security deposit, and to recover the fee for filing an Application for Dispute Resolution. The Tenant stated that on January 10, 2015 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Landlord. The Landlord stated that he received these documents January 09, 2015. I find that these documents have been served in accordance with section 89 of the *Act*.

On January 16, 2015 the Landlord submitted documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that these documents were personally served to the Tenant on January 16, 2015. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On January 13, 2015 the Tenant submitted documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were not served to the Landlord. As the documents were not served to the Landlord, they were not accepted as evidence for these proceedings and were not considered by me.

On January 15, 2015 the Tenant submitted additional documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were personally served to the Landlord on January 16, 2015. The Landlord acknowledged receipt of these documents and they were accepted as evidence for 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.

Issue(s) to be Decided

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

Is the Landlord entitled to a monetary Order for unpaid rent?

Is the Tenant entitled to the return of his security deposit?

Background and Evidence

The Landlord and the Tenant agree that when this tenancy began the Tenant agreed to pay monthly rent of \$1,050.00 by the first day of each month and that the Tenant would pay the utility bills for the rental unit.

The Landlord and the Tenant agree that the rent for January has not been paid and that rent of \$1,050.00 is currently outstanding.

The Landlord and the Tenant agree that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities which had a declared effective date of January 15, 2015, was personally served to the Tenant's wife on January 05, 2015. The Tenant stated that he received the Notice to End Tenancy from his wife on January 05, 2015.

The Landlord stated that prior to filing the Application for Dispute Resolution on January 13, 2015 he contacted the electrical company and determined that the electrical charges of \$140.58 were outstanding. The Tenant stated that he paid all of the electrical charges for the rental unit on January 26, 2015.

The Landlord and the Tenant agree that the Tenant paid a security deposit of \$525.00. At the hearing the Landlord stated that he did not want the security deposit applied to the claim for unpaid rent, as he wishes to retain the security deposit in the event there are damages to the rental unit when the unit is vacated.

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.

On the basis of the undisputed evidence, I find that the Tenant has not paid rent for January of 2015. 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 \$1,050.00 in outstanding rent to the Landlord for January of 2015.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within ten days, by providing proper written notice. On the basis of the undisputed evidence, I find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, served pursuant to section 46 of the *Act*, was personally served to the Tenant's wife on January 05, 2015, who subsequently gave it to the Tenant.

As the Tenant did not pay rent when it was due on January 01, 2015; the Landlord served the Tenant with a Ten Day Notice to End Tenancy; and the Tenant did not pay the outstanding rent after receiving the Notice to End Tenancy, I find that the Landlord has grounds to end this tenancy pursuant to section 46 of the *Act*. I therefore grant the Landlord's application for an Order of Possession and I dismiss the Tenant's application to set aside the Notice to End Tenancy.

I find that the Landlord has submitted insufficient evidence to establish that there is currently money owed for utilities. In reaching this conclusion I was influenced, in part, by the absence of documentary evidence, such as a bill, that corroborates the Landlord's claim that there were outstanding utility charges on January 13, 2015. I was also influenced by the undisputed evidence that the Tenant paid all of the utility charges on January 26, 2014. As the Landlord has failed to establish there is currently money owed for utilities, I dismiss the Landlord's application for a monetary Order for unpaid utilities.

Section 38 of the *Act* authorizes the Landlord to retain the security deposit until the tenancy ends and the Landlord retains a forwarding address for the Tenant in writing. I find that the Tenant's application to recover the security deposit is premature, as the rental unit has not yet been vacated and the Tenant has not yet provided a forwarding address, in writing. I therefore dismiss the Tenant's application to recover the security deposit. The Landlord remains obligated to comply with section 38 of the *Act* in regards to the security deposit.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing an Application for Dispute Resolution. I find that the Tenant's application is without merit and I dismiss his application to recover the fee for filing an 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 \$1,100.00, which is comprised of \$1,050.00 in unpaid rent 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 the amount of \$1,100.00. 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: January 28, 2015

Residential Tenancy Branch

