



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lombardy Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened 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, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on February 04, 2015 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 Agent for the Landlord cited a tracking number 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

In the Application for Dispute Resolution the Landlord declared that the application was being made under the *Manufactured Home Park Tenancy Act*. At the hearing the Agent for the Landlord stated that the Tenant is renting both the manufactured home and the manufactured home park site. I therefore find that this application should be made under the *Residential Tenancy Act*, which is the legislation I will be considering when determining this matter.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent; 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 September 01, 2014; that the Tenant was required to pay monthly rent of \$600.00 by the first day of each month; and that the Tenant paid a security deposit of \$300.00.

The Agent for the Landlord stated that on January 04, 2015 she personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of January 15, 2015. The Notice declared that the Tenant owed \$800.00 in rent that was due on January 01, 2015.

The Agent for the Landlord stated that when the Ten Day Notice to End Tenancy was served, the Tenant owed \$200.00 in rent from December of 2014 and \$600.00 in rent from January of 2015. She stated that the Tenant paid \$300.00 on January 26, 2015.

The Agent for the Landlord stated that no rent has been paid for February of 2015.

The Landlord is seeking compensation, in amount of \$50.00, because rent was paid late in December of 2014 and January of 2015. The Agent for the Landlord stated that the tenancy agreement does not require the Tenant to pay a fee when rent is not paid when it is due, although there is a notice posted in the office regarding this fee.

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 \$600.00 by the first day of each month.

On the basis of the undisputed evidence, I find that on January 04, 2015 the Tenant was personally served with Ten Day Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Act*.

On the basis of the undisputed evidence, I find that when the Ten Day Notice to End Tenancy was served, the Tenant owed \$200.00 in rent from December of 2014 and \$600.00 in rent for January of 2015. I find that the Tenant paid \$300.00 to the Landlord on January 26, 2015 which must be applied to the outstanding rent, leaving a balance of \$500.00. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$500.00 in outstanding rent to the Landlord for the period ending January 31, 2015.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy, by providing proper written notice. As rent was overdue on January 04, 2015, I find that the Landlord had the right to end the tenancy in accordance with section 46 of the *Act*.

Section 46 of the *Act* stipulates that a Tenant has five 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, which was January 15, 2015. On this basis I grant the landlord an Order of Possession.

As the Tenant did not vacate the rental unit on January 15, 2015, 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. As the Tenant has already been ordered to pay rent for the period between January 16, 2015 and January 31, 2015, I find that the Landlord has been fully compensated for that period.

I find that the Tenant must also compensate the Landlord for the month of February, in the amount of \$600.00, as the Tenant remained in possession of the rental unit for that month. The Landlord has not applied for compensation for per diem rent/lost revenue for March of 2015 and I have not, therefore, determined whether the Landlord is entitled to compensation for any portion of March.

Section 7(1)(d) of the *Residential Tenancy Regulation* stipulates that a landlord can charge a fee of not more than \$25.00 when rent is not paid when it is due. Section 7(2) of the *Regulation* stipulates that a landlord can only charge this fee if the tenancy agreement provides for the fee.

As the evidence shows that the tenancy agreement does not require the Tenant to pay a fee when the rent is late. I find that the Landlord is not permitted to collect a fee when rent is not paid when it is due. I therefore dismiss the Landlord's application for \$50.00 in late fees.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the fee for 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 \$1,150.00, which is comprised of \$1,100.00 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 \$300.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$850.00. 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: March 02, 2015

Residential Tenancy Branch

