



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, 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, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on February 18, 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 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.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession; to a monetary Order for unpaid rent; and to keep all or part of the security deposit?

Background and Evidence

The Landlord stated that this tenancy began on February 01, 2014; that the Tenant and a co-tenant agreed to pay monthly rent of \$1,000.00 by the first day of each month; and that the Tenant paid a security deposit of \$500.00.

The Landlord stated that only \$400.00 in rent was paid for January of 2015 and no rent has been paid for February or March of 2015, although the Tenant is still occupying the rental unit.

The Landlord stated that on January 22, 2015 she 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 February 01, 2015. The Notice declared that the Tenant owed \$600.00 in rent that was due on January 01, 2015.

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 \$1,000.00 by the first day of each month.

On the basis of the undisputed evidence, I find that only \$400.00 in rent was paid for January of 2015. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$600.00 in outstanding rent 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 by providing proper written notice. On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on January 22, 2015.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on January 25, 2015.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on January 25, 2015, I find that the earliest effective date of the Notice was February 04, 2015.

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 February 04, 2015.

Section 46 of the *Act* stipulates that a Tenant has five (5) 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 has ended. On this basis I grant the landlord an Order of Possession.

As the Tenant did not vacate the rental unit by February 05, 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. I therefore find that the Tenant is obligated to pay rent for February of 2015, in the amount of \$1,000.00. I find that Tenant is also obligated to pay rent for the eleven days in March of 2015 that the Tenant has remained in possession of the rental unit, at a daily rate of \$32.26, which equates to \$354.86.

I decline to award compensation for the entire month of March, as it is entirely possible that the Tenant will vacate the rental unit today. The Landlord retains the right to file

another Application for Dispute Resolution seeking additional compensation for unpaid rent/loss of revenue if the Tenant retains possession of the rental unit.

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 \$2,004.86, which is comprised of \$1,954.86 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 \$500.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,504.86. 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 11, 2015

Residential Tenancy Branch