



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MND, MNSD, FF

Introduction

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 damage, to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution. At the hearing the Landlord withdrew the claim for a monetary Order for damage to the rental unit, as he did not intend to make that claim at these proceedings.

The Landlord stated that on February 26, 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, via registered mail, at the rental unit. The Landlord stated that the package was returned by Canada Post, with an indication it was “unclaimed”. The Landlord submitted Canada Post documentation 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

At the outset of the hearing the Landlord stated that he recorded the incorrect address for the rental unit on the Application for Dispute Resolution and he applied to amend the Application for Dispute Resolution to correct that error. He recorded the street address of the rental unit as 988, but states the correct address is 990.

Although the Tenant did not claim the Application for Dispute Resolution that was served to him by registered mail, I find that if he had received this document it would have been reasonable for him to conclude that an administrative error had been made. I therefore grant the Landlord’s application to amend the Application for Dispute Resolution and the corrected address appears on this decision and Order.

In reaching this conclusion I was influenced, in part, by the photocopy of the envelope that was mailed to the Tenant on February 26, 2015 and by the Notice to End Tenancy that was submitted in evidence, both of which reflect the 990 address.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession, 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 May 01, 2013; that the Tenant agreed to pay monthly rent of \$675.00 by the first day of each month; and that the Tenant paid a security deposit of \$337.50.

The Agent for the Landlord stated that the Tenant did not pay any rent for January, February, or March of 2015, although he is still occupying the rental unit.

The Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of January 28, 2015, was placed on the floor of the rental unit on January 15, 2015. He stated that the door the rental unit was open but nobody answered his calls, so he simply left it on the floor.

On the Application for Dispute Resolution that was submitted in evidence on February 13, 2015, the Landlord stated that the Ten Day Notice to End Tenancy for Unpaid Rent was personally served to the Tenant on February 13, 2015. The Landlord stated that this information was recorded in error.

On the Application for Dispute Resolution that was submitted in evidence on February 24, 2015, the Landlord stated that the Ten Day Notice to End Tenancy for Unpaid Rent was served by registered mail on January 28, 2015. The Landlord stated that this information was also recorded in error.

A copy of the Notice to End Tenancy was submitted in evidence.

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 \$675.00 by the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord when it is due.

On the basis of the undisputed evidence, I find that the Tenant has not paid rent for January, February, or March of 2015. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act* and he is still occupying the rental unit, I find that the Tenant must pay \$2,025.00 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 Landlord, I find that he left a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, on the floor of the rental unit on January 15, 2015. This Notice declared that the Tenant must vacate the rental unit by January 28, 2015.

Section 46(2) of the *Act* stipulates that a notice to end tenancy under this section must comply with section 52 of the *Act*. Section 52(a) of the *Act* stipulates that to be effective a notice to end tenancy must be signed and dated by the landlord or the tenant giving the notice.

In the circumstances before me I find that the Landlord did not date the Ten Day Notice to End Tenancy that is the subject of this dispute. I therefore find that the Notice is not effective, as the Notice does not comply with section 52(a) of the *Act*.

As the Landlord has not served the Tenant with an effective Ten Day Notice to End Tenancy, I dismiss the Landlord's application for an Order of Possession. The Landlord retains the right to serve another Ten Day Notice to End Tenancy if the rent remains unpaid.

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

The Landlord has established a monetary claim, in the amount of \$2,075.00, which is comprised of \$2,025.00 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 \$337.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,687.50. 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.

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 26, 2015

