



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR

Introduction

This matter was initiated by way of a Direct Request Proceeding but was reconvened as a participatory hearing, as the Adjudicator considering the Direct Request Proceeding was unable to conclude that the Ten Day Notice to End Tenancy was properly served to the Tenant.

The hearing on June 24, 2015 was convened to consider the Landlord's application for an Order of Possession for Unpaid Rent and a monetary Order for unpaid rent.

On June 01, 2015 the Adjudicator found that the Notice of Direct Request Proceeding was served to the Tenant, via registered mail, on May 27, 2015. The Agent for the Landlord stated that the Application for Dispute Resolution and all of the evidence submitted to the Residential Tenancy Branch with the Application were included with the documents served on May 27, 2015.

The Agent for the Landlord stated that on June 06, 2015 the Notice of Dispute Resolution Hearing was mailed to the Tenant, via registered mail. Canada Post documentation was submitted that indicates mail was sent to the Tenant at the rental unit on June 06, 2015. On the basis of the undisputed evidence, I find that the Tenant was served with notice of this hearing in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not attend the hearing.

Preliminary Matter

At the hearing the Agent for the Landlord applied to amend the Application for Dispute Resolution to include a claim for unpaid rent from June of 2015, as rent has accrued since the Application for Dispute Resolution was filed.

I find that the Tenant knew, or should have known, that the Landlord would be seeking all rent that is currently due, including rent that has become due since the Application for Dispute Resolution was filed. I therefore grant the request to amend the Application to include a claim for unpaid rent from June of 2015.

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession and to a monetary Order for unpaid rent, pursuant to sections 55 and 67 of the *Residential Tenancy Act (Act)*?

Background and Evidence

The Agent for the Landlord stated that this rental unit was occupied by a third party prior to the Tenant moving into the rental unit; that the Tenant lived with the third party for a period of time; and that the Tenant was added to the tenancy agreement on August 01, 2014. A copy of that tenancy agreement was submitted in evidence.

The Agent for the Landlord stated that the current monthly rent is \$845.00, which is due by the first day of each month. She stated that the following rent payments have been made for May and June of 2015:

- May 19, 2015 - \$400.00;
- May 27, 2015 - \$300.00; and
- June 11, 2015 - \$730.00.

The Agent for the Landlord stated that receipts were given for all of the aforementioned payments, which indicated that the payment was being accepted for “use and occupancy only”. The Landlord is seeking unpaid rent for June, in the amount of \$260.00.

The Agent for the Landlord stated that on May 02, 2015 she observed her daughter post a Ten Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit. The Landlord submitted a Proof of Service of Notice to End Tenancy, which the Agent for the Landlord says was signed by her daughter. The Proof of Service declares that the Landlord, which is a business, posted the Notice to End Tenancy however the Agent for the Landlord clarified that it was posted by her daughter.

The Ten Day Notice to End for Unpaid Rent was submitted in evidence. It declares that the Tenant must vacate the rental unit by May 15, 2015.

Analysis

On the basis of the undisputed evidence, I find that during the latter part of the tenancy the Tenant was required to pay rent of \$845.00 by the first day of each month; that the Tenant did not pay rent for May, in full, until June 11, 2015; and that the Tenant has only paid \$585.00 in rent for June of 2015.

Section 26 of the *Residential Tenancy Act (Act)* authorizes a landlord to end a tenancy if rent is not paid when it is due by serving the tenant with a Ten Day Notice to End Tenancy for Unpaid Rent. On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy for Unpaid Rent was posted on the door of the rental unit on May 02, 2015. As rent was not paid when it was due on May 01, 2015 and the Tenant has been served with a ten day notice to end tenancy, I find that the Landlord has the right to end this tenancy pursuant to section 26 of the *Act*.

Section 46(4) 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 to End Tenancy. 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* and I therefore find that the Tenant accepted that the tenancy ended on the effective date of the Notice to End Tenancy, which was May 15, 2015. As the Tenant has not yet vacated the rental unit, I grant the Landlord's application for an Order of Possession.

As the Tenant did not vacate the rental unit by May 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 paid rent for the full month of May, I find that no further rent is due for that month.

I find that the Tenant must compensate the Landlord for the 24 days in June of 2015 that the Tenant remained in possession of the rental unit, at a daily rate of \$28.17, which equates to \$676.08. As the Tenant has already paid \$585.00 in rent for June, I find that he still owes \$91.08 in rent for June.

I decline to grant compensation for rent for any period after June 24, 2015, as it is entirely possible the Tenant will vacate the rental unit today. The Landlord retains the right to file another Application for Dispute Resolution seeking compensation for unpaid rent/lost revenue if the rental unit is not vacated by the end of today.

Conclusion

The Landlord has been granted 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.

I find that the Landlord has established a monetary claim, in the amount of \$91.08, for unpaid rent and I grant the Landlord a monetary Order for that amount. 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: June 24, 2015

Residential Tenancy Branch

