



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPL, 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, 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 Landlord stated that on May 12, 2015 he personally served the Tenant with the Application for Dispute Resolution, the Notice of Hearing and a second copy of the Two Month Notice to End Tenancy, dated January 31, 2015. 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

The Landlord applied to amend the Application for Dispute Resolution to include rent/lost revenue from June of 2015, as that amount has come due since he filed the Application. 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 Landlord's application to amend the Application for Dispute Resolution and I will consider the claim for lost revenue/unpaid rent from June of 2015.

Issue(s) to be Decided

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

Background and Evidence

The Landlord stated that this tenancy began on August 01, 2013; that the Tenant agreed to pay rent of \$1,200.00 by the first day of each month; and that the Tenant paid a security deposit of \$600.00.

The Landlord stated that on January 31, 2015 he posted a Two Month Notice to End Tenancy for Landlord's Use of Property, on the door of the rental unit, which had a declared effective date of March 31, 2015. He stated that the Tenant is still living in the rental unit and he does not believe that the Tenant disputed the Two Month Notice to End Tenancy.

The Landlord stated that:

- the Tenant was entitled to one free months' rent as a result of being served with the Two Month Notice to End Tenancy for Landlord's Use of Property;
- the Tenant was not, therefore, required to pay rent for March of 2015;
- the Tenant did not pay any rent for March, April, May, or June of 2015; and the Landlord is seeking compensation for unpaid rent/lost revenue for April, May, and June.

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 \$1,200.00 by the first day of each month.

On the basis of the undisputed evidence, I find that the Tenant was served with a Two Month Notice to End Tenancy that declared the Tenant must vacate the rental unit by March 31, 2015.

Section 49(9) of the *Act* stipulates that a tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 49 of the *Act* and that a tenant must vacate the rental unit by that date unless the tenant disputes the notice within fifteen days of receiving it. As there is no evidence that the Tenant filed an application to dispute the Two Month Notice to End Tenancy, I find that the Tenant accepted that the tenancy ended on March 31, 2015, pursuant to section 49(9) of the *Act*. As the rental unit has not yet been vacated, I grant the Landlord an Order of Possession.

I find that the Tenant breached section 49(9) of the *Act* when the Tenant did not vacate the rental unit by the effective date of the Two Month Notice to End Tenancy. As the Tenant has remained in possession of the rental unit, I find that she must pay rent for the period between April 01, 2015 and June 23, 2015. I find that the continued occupancy of the rental unit makes it difficult, if not impossible for the Landlord to find

new tenants for the remainder of June and I therefore find that she must compensate the Landlord for lost revenue for the period between June 24, 2015 and June 30, 2015. Total amount due for lost revenue and unpaid rent for the period between April 01, 2015 and June 30, 2015 is \$3,600.00.

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 not later than 1:00 p.m. on June 30, 2015. 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 \$3,650.00, which is comprised of \$3,600.00 in unpaid rent/lost revenue 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 \$600.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$3,050.00. 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: June 23, 2015

Residential Tenancy Branch

