



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Villa Paulina and Galatia Realty Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, CNR, MT, FF

Introduction

This was a cross-application hearing.

On July 3, 2015 the tenant applied requesting more time to cancel a 10 day Notice to end tenancy issued on July 2, 2015 and to cancel the Notice.

On July 27, 2015 the landlord applied requesting an Order of possession for unpaid rent, a monetary Order for unpaid rent and loss of rent revenue, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Preliminary Matters

Both parties were present at the hearing. The landlord entered the hearing at the scheduled start time.

The Telus operator entered the conference call hearing seven minutes after the start of the hearing to explain the tenant was having difficulty entering the call. Within one minute the tenant entered the hearing. The parties were then introduced.

As the hearing had commenced prior to the tenant entering the conference call I explained to the tenant that the landlords' had been affirmed. The tenant was then affirmed.

The landlord had confirmed receipt of the tenants' hearing documents.

The landlord's application was explained to the tenant. The tenant said she did not receive the hearing documents or evidence.

The landlord submitted a copy of the registered mail receipt for the mail containing the hearing documents sent to the tenants' rental unit address on July 30, 2015. During the hearing the landlord used a computer to track the registered mail and provided

testimony that the Canada Post tracking information showed the tenant (name indicated on the web site) had signed accepting the registered mail on July 31, 2015. The tenant said she did not sign accepting the mail and does not know why the Canada Post tracking information would show that she signed accepting the mail.

I have accepted the landlords' testimony that the tenant signed accepting the registered mail. Delivery of registered mail is rebuttable; however I find that the record of the tenant's acceptance of the mail on the Canada Post web site provides ample evidence that she did in fact accept that mail. I find, on the balance of probabilities, that there is no other reasonable explanation for the record created by Canada Post, other than the tenant receiving the mail. For this reasons I preferred the landlords' testimony over that of the tenant. Therefore, I find, pursuant to section 89 of the Act that the tenant was served with the landlord's hearing documents and evidence on July 31, 2015.

The hearing process was explained to the parties, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. I have considered all of the evidence and testimony provided.

As the tenant applied to dispute the Notice within one day of receipt of the Notice an extension of time to apply is not required. In fact the tenant confirmed she requested more time to pay the rent, not to apply to dispute the Notice. I explained that a request for more time does not provide an opportunity to pay rent outside of the five day requirement indicated on the Notice ending tenancy.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent and loss of rent revenue?

May the landlord retain the security deposit paid by the tenant?

Background and Evidence

The tenancy commenced on July 1, 2014, rent is \$725.00 due on or in advance of the first day of each month. A security deposit in the sum of \$362.50 was paid.

There was no dispute that on July 2, 2015 the tenant received a 10 day Notice to end tenancy for unpaid rent that was issued and received on that date. The Notice had an effective date of July 12, 2015.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$725.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set

out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

There was no dispute that the tenant had always paid her rent directly to the landlord. The tenant did not dispute that July 2015 rent was not paid until July 29, 2015.

The landlord said that since July they have received two payments from a government Ministry. This government Ministry staff had called the landlord to enquire about the tenants' payment of rent. On August 11, 2015 the landlord received payment in the sum of \$375.00 and on August 26, 2015 another payment from the Ministry was made in the sum of \$725.00.

Receipts for the July 29 and August 11, 2015 payments have been given to the tenant, indicating that the tenancy has not been reinstated. The landlord has issued a receipt for the August 26, 2015 payment which will be given to the tenant as they always are, by placing them in the tenants' mail box.

Initially the tenant said she had not received any receipts; she then confirmed a receipt had been received for the July payment she made by money order.

The tenant said that she plans to vacate the rental unit.

Analysis

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on July 2, 2015, pursuant to section 46 of the Act. Receipt was not disputed by the tenant.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenant has confirmed that she did not pay the rent within five days of July 2, 2015. It was not until July 29, 2015 that the rent was paid. Therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; July 12, 2015.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$362.50 for per diem rent owed in September 2015, and that the landlord is entitled to compensation in that amount.

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the security deposit in satisfaction of the claim for loss of rent revenue.

The landlord has been granted an Order of possession that is effective September 15, 2015; the date to which rent has been paid. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Based on these determinations I grant the landlord a monetary Order for the filing fee cost of \$50.00. 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.

Conclusion

The landlord is entitled to an Order of possession and monetary Order for filing fee costs.

The landlord may retain the security deposit in satisfaction of the claim for loss of rent revenue.

This decision is final and binding on the parties and 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: September 03, 2015

Residential Tenancy Branch

