



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR Limited Partnership
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: MT

For the landlord: OPR, MNR, MNSD, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act ("Act").

The tenant applied for an order granting more time to make an application to cancel a notice to end tenancy.

The landlord applied for an order of possession for the rental unit due to unpaid rent pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice") issued by the landlord, a monetary order for unpaid rent pursuant to their Notice, for authority to retain the tenant's security deposit, and for recovery of the filing fee paid for this application.

The landlord's agent (hereafter "landlord") attended the hearing; the tenant did not attend.

The landlord stated that they served the tenant their application for dispute resolution and notice of hearing letter by registered mail on or about August 26, 2015, and that their evidence submitted, the tracking history of the Canada Post registered mail, shows that the tenant signed for the mail.

Based upon the landlord's submissions, I accept the tenant was served notice of this hearing in a manner complying with section 89(1) of the Act, and the hearing proceeded on the landlord's application in the tenant's absence.

Thereafter the landlord was provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Procedural matter- In the absence of the tenant to present their claim, pursuant to section 10.1 of the Rules, I dismiss the tenant's application, without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit, to authority to retain the tenant's security deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

The landlord supplied a written tenancy agreement showing that this tenancy began on April 1, 2015, that monthly rent is \$850.00, and that the tenant paid a security deposit of \$350.00.

The landlord submitted that on August 4, 2015, they served the tenant with their Notice, by attaching the document to the tenant's door, listing unpaid rent of \$800.00 as of August 1, 2015. The effective vacancy date listed on the Notice was August 14, 2015. The tenant supplied a copy of the Notice.

Under section 90 of the Act, the tenant was deemed to have received the Notice 3 days after it was posted; in this case, the deemed service date was August 7, 2015. A 10 Day Notice to end the tenancy is not effective earlier than 10 days after the date the tenant receives the Notice. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date, August 14, 2015 is changed to August 17, 2015.

The Notice informed the tenant that she had 5 days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice or to pay the rent in full; otherwise the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

The tenant did file her application to dispute the Notice, but she did not mark on her application that she was applying to dispute the Notice and further, as the tenant did not attend the hearing in support of her application, it has been dismissed.

The landlord submitted that since the Notice was issued to the tenant, there have been some payments of rent, more particularly, \$375.00 on August 26th, \$800.00 on August 31st, and \$850.00 on September 30, 2015. As of the date of the hearing, according to the landlord, the tenant still owed a rent deficiency of \$550.00, as reflected in the tenant ledger sheet provided by the landlord. The landlord submitted further that the tenant was issued receipts for her rent payments on a use and occupancy only basis.

Analysis

Base on the undisputed evidence of the landlord, I find the landlord submitted sufficient evidence that the tenant was served a valid Notice, did not pay the outstanding rent within 5 days of receiving the Notice, in this case, August 7, 2015, and did not vacate the rental unit. Additionally the tenant did not appear at the hearing in support of her own application. I find the tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Therefore, pursuant to section 55 of the Act, I find that the landlord is entitled to and I grant an order of possession for the rental unit effective 2 days after service of the order upon the tenant. The order of possession for the rental unit is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

I also find the landlord submitted sufficient evidence to show that the tenant, under the written tenancy agreement, owed and has not paid rent in full since the Notice was issued. I therefore find the landlord is entitled to a monetary award of \$600.00, comprised of loss of rent revenue through the date of the hearing for \$550.00, as the tenant is now overholding in the rental unit after the effective end of tenancy date listed on the Notice, and the \$50.00 filing fee paid by the landlord for this application.

At the landlord's request, I allow the landlord to retain the tenant's security deposit of \$350.00 in partial satisfaction of their monetary award.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$250.00, which is enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant's application is dismissed due to her failure to attend the hearing and as I have granted the landlord's application.

The landlord's application for an order of possession for the rental unit and a monetary order is granted.

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: October 28, 2015

Residential Tenancy Branch

