



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR

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 for Unpaid Rent and a monetary Order for unpaid rent.

The Agent for the Landlord stated that on September 30, 2015 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted with the Application for Dispute Resolution were sent to the Tenant, via registered mail, at the rental unit. 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 hearing the Agent for the Landlord applied to amend the Application for Dispute resolution to include a claim for unpaid rent from October, November, and December of 2015.

I find that the Tenant knew, or should have known, that the Landlord would be seeking to recover all outstanding rent during these proceedings, including rental arrears that have accrued since the Application for Dispute Resolution was filed.

I therefore grant the request to amend the Application for Dispute resolution to include a claim for unpaid rent from October, November, and December of 2015.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent?

Background and Evidence

The Agent for the Landlord with the initials "L.R." stated that:

- this tenancy began on October 28, 2013;
- the Tenant agreed to pay rent of \$407.37 by the first day of each month;
- the Tenant still owes \$36.92 in rent for July of 2015;
- the Tenant has paid no rent for the period between August 01, 2015 and December 01, 2015;
- she posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of September 24, 2015 on the door of the rental unit on September 14, 2014; and
- the rental unit is still being occupied by the Tenant.

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 \$407.37 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 still owes \$36.92 in rent for July of 2015 and \$814.74 for the period between August 01, 2015 and September 30, 2015. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$851.66 in rent for these periods.

If rent is not paid when it is due section 46(1) of the *Act* entitles landlords to end the tenancy within ten days, by providing proper written notice. On the basis of the undisputed evidence I find that the Ten Day Notice to End

Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on September 14, 2015.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on September 17, 2015.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on September 17, 2015, I find that the earliest effective date of the Notice was September 27, 2015.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was September 27, 2015.

Section 46 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. 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*, I find that the Tenant accepted that the tenancy has ended. On this basis I grant the landlord an Order of Possession.

As the Tenant did not vacate the rental unit on September 27, 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 been ordered to pay rent for the period between September 27, 2015 and September 30, 2015, I find that the Landlord has been fully compensated for September.

I also find that the Tenant must compensate the Landlord for the months of October and November of 2015, in the amount of \$814.74, as the Tenant remained in possession of the rental unit for those months.

I also find that the Tenant must compensate the Landlord for one day in December of 2015, in the amount of \$26.28, as the Tenant remained in

possession of the rental unit for that day. I decline to award compensation for the entire month of December as it is entirely possible that the Tenant will vacate the rental unit on December 01, 2015. The Landlord retains the right to file another Application for Dispute Resolution seeking additional compensation for unpaid rent/loss of revenue if the Tenant does not vacate by December 01, 2015.

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 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.

The Landlord has established a monetary claim, in the amount of \$1,742.68, which is comprised of \$1,692.68 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order \$1,742.68. In the event 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: December 01, 2015

Residential Tenancy Branch

