



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEIGHBOURHOOD HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession and Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlord testified that the hearing package was sent to the tenant via registered mail using the rental unit address on November 6, 2015. The landlord confirmed that the tenant still resides at the rental unit and the landlord orally provided the registered mail tracking number as proof of service. A search of the tracking number showed that the registered mail was successfully delivered to the tenant on November 13, 2015. I was satisfied the tenant was served with notice of this proceeding and I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent?

Background and Evidence

The tenancy commenced February 1, 2006 and the tenant paid a security deposit of \$378.00. The tenant is required to pay rent on the first day of every month. The rent is subsidized and currently the tenant's rent obligation is \$140.00 per month.

The tenant failed to pay rent for October 2015 when due. The landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the door of the rental unit on October 5, 2015 indicating rent of \$140.00 was outstanding as of October 1, 2015. The Notice has a stated effective date of October 20, 2015. The tenant did not pay the outstanding rent or file to dispute the Notice within five days of receiving the Notice.

The landlord testified that the tenant has continued to occupy the rental unit and has made two payments since the Notice was served: \$140.00 on November 26, 2015 and

\$140.00 on December 9, 2015. The landlord testified that receipts were issued for these payments indicating the payments were accepted for use and occupancy only.

The landlord seeks an Order of Possession effective as soon as possible. The landlord had applied for compensation of four months of rent or loss of rent for the months of October 2015 through January 2016; however, in recognition of the two payments the tenant has since made, the landlord seeks a Monetary Order for loss of rent equivalent to two months of rent. The landlord confirmed that it seeks to continue to hold the security deposit in trust, to be administered at a later date, in accordance with the Act.

Documentary evidence provided by the landlord included a copy of: the 10 Day Notice; a tenancy agreement signed by the landlord on February 1, 2006; and, a BC Housing document used to calculate the subsidized rent obligation signed by the tenant on March 9, 2015.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the undisputed evidence before me that the tenant was required to pay subsidized rent of \$140.00 on the first day of every month and the tenant failed to meet this obligation with respect to the month of October 2015. I also accept that the landlord posted a 10 Day Notice to End Tenancy in the approved form on the rental unit door on October 5, 2015. Pursuant to section 90 of the Act it is deemed to be received by the tenant three days after posting, or October 8, 2015. I find the stated effective date of October 20, 2015 complies with the requirements of the Act.

Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on October 20, 2015. I am satisfied that the landlord did not reinstate the tenancy upon receiving two payments that were accepted for use and occupancy only. Accordingly, I find the landlord is entitled to

regain possession of the rental unit and I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

Based upon the undisputed evidence before me, I find the landlord entitled to recover unpaid and or loss of rent in the sum of \$280.00, as requested, for the two months that were no paid during period of October 2015 through January 2016. I also award the landlord recovery of the filing fee paid for this application. Accordingly, I provide the landlord with a Monetary Order in the sum of \$330.00 to serve upon the tenant.

Since the landlord did not seek authorization to retain any part of the security deposit with this application it remains in trust, to be administered in accordance with the Act.

Conclusion

The landlord has been provided an Order of Possession effective two days after service upon the tenant. The landlord has been provided a Monetary Order in the sum of \$330.00 to serve and enforce upon the tenant. The security deposit remains in trust to be administered in accordance with the Act.

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: January 06, 2016

Residential Tenancy Branch

