



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 860 7486 Canada Ltd.
and [tenant name suppressed to protect privacy]

FINAL DECISION

Dispute Codes:

OPR, MNR

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent via the Direct Request Proceeding process.

On December 15, 2015 an interim decision was issued adjourning the ex parte hearing to this participatory conference call hearing.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord made several attempts in December 2015 to serve the tenant with the hearing documents and evidence. The first registered mail was returned indicating the tenant had vacated. The next registered mail was returned marked by Canada Post as the mail was refused.

The tenant said it is likely the mail went to the upper unit and that she did not refuse the mail. The tenant confirmed that approximately one week prior to the hearing the landlord personally served her with the documents, at the rental unit. The tenant said she was prepared to proceed with the hearing.

The parties were informed that I would consider the claim for unpaid rent, to the date of this hearing, plus disposition of the security deposit. The decision to amend the amount of rent owed is based on section 4.2 of the Residential Tenancy Branch Rules of Procedure.

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?

May the landlord retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy commenced in September 2013. In May 2015 the landlord purchased the property and assumed the tenancy.

Rent was \$775.00 per month due on the first day of each month. A security deposit in the sum of \$385.00 was paid on August 25, 2013. A copy of the tenancy agreement was supplied as evidence.

The tenant confirmed receipt of a 10 day Notice ending tenancy for unpaid rent or utilities, on November 23, 2015. The Notice had an effective date of November 23, 2015.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$775.00 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.

The tenant confirmed during the hearing that she has not paid any rent since October 2015. The tenant said she has vacated; however the landlord said people are still occupying the unit.

Analysis

Based on the tenant's confirmation I find that the tenant received the Notice to end tenancy on November 23, 2015.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant received this Notice on November 23, 2015, I find that the earliest effective date of the Notice was December 3, 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 December 3, 2015.

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 December 3, 2015, pursuant to section 46 of the Act.

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. In the circumstances before me I have no evidence that the tenant exercised either of these rights; 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; December 3, 2015.

The tenant has confirmed she has not paid rent since October 2015. Therefore, I find that the tenant has not paid rent and per diem in the amount of \$2,325.00 from November 2015 to January 2016 inclusive, and that the landlord is entitled to compensation in that amount.

As the landlord's application has merit I find that the landlord is entitled to recover the \$50.00 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 \$385.00 security deposit in partial satisfaction of the claim.

The landlord has been granted an Order of possession that is effective two days after service to 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.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,990.00. 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 unpaid rent.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, 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: January 29, 2016

Residential Tenancy Branch

