



Dispute Resolution Services

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 and a monetary Order for unpaid rent.

The Advocate for the Landlord stated that on November 04, 2015 the Application for Dispute Resolution, the Notice of Hearing and a copy of the Notice to End Tenancy that is the subject of this dispute was sent to the Tenant, via registered mail, at the rental unit. The Landlord cited a Canada Post tracking number that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served to the Tenant in accordance with section 89 of the *Residential Tenancy Act* (Act); however the Tenant did not appear at the hearing.

The Landlord was advised that I was not in possession of the Ten Day Notice to End Tenancy that the Landlord stated was submitted to the Residential Tenancy Branch with the Application for Dispute Resolution. As the Residential Tenancy Branch does, on occasion, misplace evidence, the Landlord was given the opportunity to re-submit this document to the Residential Tenancy Branch. The Advocate for the Landlord stated that she will re-submit this document by the end of the day on January 08, 2015. The Landlord was advised that I will render a decision after I have had the opportunity to view the evidence.

The Landlord re-submitted the Ten Day Notice to End Tenancy to the Residential Tenancy Branch on January 04, 2016 and it was received by me on January 11, 2016.

Preliminary Matter

The Advocate for the Landlord applied to amend the Application for Dispute Resolution to include all rent that is currently due. I find that it was reasonable for the Tenant to conclude that the Landlord is seeking to recover all of the rent that is currently due, including unpaid rent that has accrued since the Application for Dispute Resolution was

filed. I therefore grant the application to amend the monetary claim to include all rent that is currently due.

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 Advocate for the Landlord stated that:

- this tenancy began in 2012;
- the Tenant agreed to pay monthly rent of \$800.00 by the first day of each month;
- the Tenant paid \$200.00 in rent for September of 2015;
- the Tenant has not paid any rent for any period after September 30, 2015;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of October 15, 2015, was posted on the door of the rental unit by the Landlord on October 05, 2015;
- the Ten Day Notice to End Tenancy declared that the Tenant owed \$1,400.00.00 in rent that was due on September 01, 2015;
- the Ten Day Notice to End Tenancy should have declared that the Tenant owed \$1,400.00.00 in rent that was due on October 01, 2015; and
- the Tenant is still occupying the rental unit.

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 \$800.00 by the first day of each month and that the Tenant still owes \$1,400.00 of the rent due for September and October of 2015. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,400.00 in outstanding rent for September and October of 2015.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days, by providing proper written notice, if rent is not paid when it is due. 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 on the door of the rental unit on October 05, 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. 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 ended on the effective date of the Notice to End Tenancy. On this basis I grant the landlord an Order of Possession.

As the Tenant did not vacate the rental unit on the effective date of the Ten Day Notice, 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 entire month of October of 2015, I find that the Landlord has been fully compensated for that month.

I find that the Tenant must also compensate the Landlord for the months of November and December of 2015, as she remained in possession of the rental unit for those months. I therefore find that she owes \$1,600.00 in rent for those months.

I find that the Tenant must also compensate the Landlord for the four days in January of 2016 that she remained in possession of the rental unit for that month, at a daily rate of \$25.81, which equates to \$103.24. I decline to award compensation for the entire month of January, as it is entirely possible that the Tenant will vacate the rental unit on January 04, 2016.

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 \$3,153.24, which is comprised of \$3,103.24 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 for \$3,153.24. 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: January 11, 2016

Residential Tenancy Branch