



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MND, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for unpaid rent and damage to the rental unit, a monetary Order for unpaid rent, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on December 21, 2015 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service.

The Canada Post notice for mail pick-up was put in the landlord's mailbox, so the landlord put that notice on the tenant's door. The registered mail was not returned to the landlord by Canada Post.

Therefore, I find that these documents are deemed to have been served on the fifth day after mailing, in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

Preliminary Matters

At the start of the hearing the landlord confirmed that his monetary claim included on the application was for unpaid rent for December 2015 and January 2016. In accordance with section 4.2 of the Residential Tenancy Branch Rules of Procedure I have amended the application to reflect a claim for loss of rent revenue, beyond the effective date of the Notice ending tenancy.

The reference to damages mentioned in the details section of the application indicated that the tenant had paid for some damage that had occurred. A claim for damage was not set out by the landlord. Therefore, I considered the only monetary matter set out in the application, for unpaid rent.

The landlord obtained possession of the rental unit sometime during the first week of January 2016; an Order of possession is not required.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent and loss of rent revenue?

May the landlord retain the security deposit paid by the tenant?

Background and Evidence

The tenancy commenced on February 6, 2015, rent was \$700.00 per month, due on the first day of each month. A security deposit in the sum of \$350.00 was paid. A copy of the tenancy agreement was supplied as evidence.

The landlord stated that on December 2, 2015 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of December 12, 2015, was served by posting to the tenant's door. The landlord issued the 10 day Notice to end tenancy as he was not confident the tenant would vacate.

On December 15, 2015 the landlord saw the tenant and asked the tenant to move out. The landlord helped the tenant place some personal property into the landlord's garage. The tenant was going to finish moving out but did not remove the rest of the personal property.

During December the landlord saw someone at the unit on several occasions.

On December 18, 2015 the landlord submitted the application for dispute resolution as he was not confident he would obtain possession of the unit. The landlord did not seek new tenants for January as he was uncertain he would have possession.

On December 20 or 21, 2015 the landlord entered the unit, after posting a notice of entry. The tenant's belongings remained in the unit; there was food in the fridge.

The landlord had attempted to reach the tenant by phone but received no response. The tenant would not answer; however, during the first week of January 2016 the tenant did answer a call. At this point the tenant told the landlord that the personal property in the rental unit could be disposed of and that the landlord could take possession of the unit.

The landlord emptied the unit in mid-January, advertised and located a new tenant for February 1, 2016.

The landlord has claimed unpaid December 2015 and January 2016 rent. The landlord said he had to wait for this hearing to be sure he could take legal possession of the rental unit.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the 3rd day after it is posted. Therefore, I find that the tenant received the Notice to end tenancy on December 5, 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 is deemed to have received this Notice on December 5, 2015, I find that the earliest effective date of the Notice is December 15, 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 15, 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 15, 2015, pursuant to section 46 of the Act.

The tenant did not vacate the rental unit as required and there was no evidence before me that the tenant disputed the Notice. However, from the unopposed evidence before me I find that the tenant failed to vacate the rental unit by the effective date of the Notice ending tenancy.

I find that the failure of the tenant to vacate resulted in the landlord losing rent revenue in the sum of \$700.00 for the month of January. I find that the landlord mitigated future losses by submitting the application for dispute resolution. The landlord determined that he could dispose of the tenant's property and mitigated by locating a new tenant for February 1, 2016.

Therefore, in the absence of the tenant who was served with notice of this hearing I find that the landlord is entitled to unpaid rent from December 1 to 15, 2015 and loss of rent revenue from December 16, 2015 to January 31, 2016 in the sum of \$1,400.00.

As the landlord's application has merit I find, pursuant to section 72 of the Act 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 \$350.00 security deposit in partial satisfaction of the claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,100.00. 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 a monetary Order for unpaid rent and loss of rent revenue.

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 27, 2016

Residential Tenancy Branch

