



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNDC, FF

Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for an Order of Possession, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on January 06, 2016 he personally served the Tenant with the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlords submitted to the Residential Tenancy Branch on January 20, 2016. The Tenant acknowledged receipt of these documents, although he believes they were personally served to him a few days after January 06, 2016. As the Tenant acknowledged receiving these documents, they were accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession and to a monetary Order for unpaid rent?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on October 01, 2015;
- the Tenant agreed to pay monthly rent of \$750.00 by the first day of each month;
- a tenancy agreement was not signed;
- the Tenant has not paid rent for December of 2015, January of 2016, or February of 2016; and
- the Tenant is still occupying the rental unit.

The Landlord stated that on December 05, 2015 he personally served a Ten Day Notice to End Tenancy for Unpaid Rent to a woman he believes is an adult who was living in the rental unit. The Tenant stated that this Notice was served to the mother of his children, who does not reside in the rental unit, sometime in December of 2015. He stated that the mother of his children did not tell him about the Notice for a few days and he did not see the Notice to End Tenancy until December 22, 2015.

The Landlord and the Tenant agree that the Notice to End Tenancy that is the subject of this dispute is dated December 05, 2015 and that it declared that the Tenant must vacate the rental unit by December 15, 2015.

The Tenant stated that he did not pay his rent for December, January, or February because the Landlords were entering his rental unit without authority, the Landlords had not provided internet/cable service; and there were a variety of deficiencies with the rental unit, such as a broken toilet seat.

The Tenant was not permitted to provide details regarding the concerns about deficiencies with the tenancy, as deficiencies are typically not grounds to withhold rent. The Tenant was advised of section 26(1) of the *Act*, which stipulates that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. The Tenant acknowledged that he did not make any emergency repairs during the tenancy which might give him a legal right to withhold rent and that he did not have authorization to withhold rent from the director of the Residential Tenancy Branch.

At the conclusion of the hearing the Tenant asked if he could apply his security deposit to the outstanding rent and the Landlord indicated a willingness to do so. The amount of the security deposit was not discussed at the hearing.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a verbal tenancy agreement with the Landlords that required the Tenant to pay monthly rent of \$750.00 by the first day of each month and that the Tenant has not paid rent for December of 2015, January of 2016, or February of 2016. As the Tenant was required to pay rent when it was due on December 01, 2015, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$750.00 in rent for December of 2015.

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 testimony of the Tenant, I find that the Tenant received a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, on December 22, 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 received the Ten

Day Notice to End Tenancy on December 22, I find that the earliest effective date of the Notice was January 01, 2016.

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 Ten Day Notice to End Tenancy was January 01, 2016.

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 has ended. On this basis I grant the landlord an Order of Possession.

As the Tenant has not yet vacated the rental unit I find that the Tenant is obligated to pay rent, on a per diem basis, for the days he remained in possession of the rental unit. I therefore find that the Tenant must pay \$750.00 in rent for January of 2016 and \$439.62 for the seventeen days he has retained possession of the rental unit in February of 2016, which is based on a per diem rate of \$25.86.

I find that the Tenant fundamentally breached the tenancy agreement when the Tenant did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when the Tenant did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that the continued occupancy of the rental unit makes it difficult, if not impossible, for the Landlord to find new tenants for the remainder of February of 2016. I therefore find that the Tenant must compensate the Landlords for the loss of revenue they can be reasonably expected to experience between February 17, 2016 and February 29, 2016, which is \$310.38.

In the event the Landlords wish to apply the Tenant's security deposit to the rent that is owed, I hereby authorize the Landlords to retain the security deposit pursuant to section 38(3) of the *Act*, which stipulates that a landlord may retain from a security deposit that the director has previously ordered the tenant to pay to the landlord and at the end of the tenancy remains unpaid. In this case the monetary Order will be reduced by the amount of the security deposit.

In the event the Landlords do not wish to apply the Tenant's security deposit to the rent that is owed, the Landlords remain obligated to retain/return the security deposit in accordance with section 38 of the *Act*.

I find that the Landlords' application has merit and that the Landlords are entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlords 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 Landlords have established a monetary claim, in the amount of \$2,300.00, which is comprised of \$2,250.00 in unpaid rent/lost revenue and \$50.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Landlords a monetary Order for the balance of \$2,175.00. 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 18, 2016

Residential Tenancy Branch

