



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on June 10, 2016 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted with to the Residential Tenancy Branch on June 13, 2016 were personally served to the Tenant. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel a Notice to End Tenancy for Unpaid Rent and for more time to apply to cancel that Notice to End Tenancy. The Tenant filed her Application for Dispute Resolution within five days of being served with the Notice to End Tenancy that is the subject of this dispute and I therefore do not need to consider her claim for more time to apply to cancel the Notice.

The Tenant stated that on June 01, 2016 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Agent for the Landlord. The Agent for the Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Should the Notice to End Tenancy for Unpaid Rent be set aside?

Is the Landlord entitled to a monetary Order for unpaid rent, loss of revenue, and late fees?

Is the Landlord entitled to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on October 01, 2010;
- the Tenant paid a security deposit of \$400.00;
- rent is due by the first day of each month;
- there is a clause in the Rules and Regulations that form part of the tenancy agreement that requires the Tenant to pay \$25.00 when rent is not paid when it is due;
- rent for April was not paid when it was due on April 01, 2016, although it has since been paid;
- rent has not been paid for May or June of 2016;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of June 07, 2016, was posted on the door of the rental unit on May 29, 2016; and
- the Ten Day Notice to End Tenancy declared that the Tenant owed \$882.88 in rent that was due on May 01, 2016.

The Agent for the Landlord stated that the current monthly rent is \$882.88. The Tenant stated that the current monthly rent is \$882.80. The Agent for the Landlord stated that the Landlord is only seeking \$879.45 in rent for May and \$879.45 in June as there is a suggestion that the Tenant did not receive the notice of rent increase that increased her rent from \$879.45 to \$882.88.

The Landlord is seeking compensation for late fees, in the amount of \$100.00, because rent was not paid when it was due in April, May, June, and July of 2016.

The Landlord is seeking compensation for lost revenue for July of 2016. The Agent for the Landlord stated that the Landlord was not willing to permit the Tenant to remain in the rental unit for the month of July, even if rent was awarded for that month.

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 rent by the first day of each month and that rent for May and June of 2016 was at least \$879.45. As the Tenant

acknowledges that she has not paid rent for May or June of 2016, I grant the Landlord's claim for unpaid rent for May and June, in the amount of \$1,758.90.

Section 46(1) of the *Act* entitles landlords to end the 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 a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on May 29, 2016.

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 acknowledged receiving the Notice on May 29, 2016 I find that the earliest effective date of the Notice was June 08, 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 June 08, 2016.

As the Tenant was served with a Ten Day Notice to End Tenancy and rent remains unpaid, I find that the Landlord has the right to end this tenancy pursuant to section 46 of the *Act*. I therefore dismiss the Tenant's application to set aside this Notice and I grant the Landlord's application for an Order of Possession.

As the Tenant did not pay her rent when it was due in April, May, and June of 2016 and the tenancy agreement requires the Tenant to pay a fee of \$25.00 whenever rent is not paid when it is due, I find that the Landlord is entitled to late fees of \$75.00 for these three months. As rent is not yet due for July of 2016, I dismiss the Landlord's claim for a late fee for July.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. I find that the Landlord did not take reasonable steps to minimize the lost revenue the Landlord anticipates experiencing in July when the Landlord requested an immediate Order of Possession, rather than allowing the Tenant to remain in the unit until the end of July and to pay rent for that month. I therefore dismiss the Landlord's claim for lost revenue for the month of July.

As it is entirely possible that the Tenant will vacate the rental unit prior to July 01, 2016, I am unable to order the Tenant to pay rent for any days in July that she remains in the rental unit. The Landlord retains the right to file another Application for Dispute Resolution seeking compensation for any days in July that the Tenant remains in possession of the rental unit, but not for lost revenue from July.

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 \$1,933.90, which includes \$1,758.90 in unpaid rent, late fees of \$75.00, and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$400.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,533.90. 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 *Residential Tenancy Act*.

Dated: June 30, 2016

Residential Tenancy Branch