



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 Landlord's 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, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on July 19, 2016 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted with the Application for Dispute Resolution were personally served to the Tenant. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent/lost revenue?

Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began on June 01, 2016;
- the Tenant agreed to pay monthly rent of \$800.00 by the first day of each month;
- the Tenant did not pay any rent for July or August of 2016;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which has a declared effective date of July 18, 2016, was posted on the door of the rental unit on July 06, 2016;
- the Ten Day Notice to End Tenancy declared that the Tenant owed \$800.00 in rent that was due on July 01, 2016; and
- the Tenant has not vacated the rental unit.

The Advocate for the Tenant stated that he witness the Landlord post the Ten Day Notice on the Tenant's door on July 06, 2016.

The Landlord is seeking lost revenue for September of 2016. She stated that she wishes to regain possession of the rental unit as soon as possible.

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 has not paid rent for July of 2016. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$800.00 in rent for July of 2016.

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 the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on July 06, 2016.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on July 09, 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 is deemed to have received this Notice on July 09, 2016, I find that the earliest effective date of the Notice was July 19, 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 July 19, 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 did not vacate the rental unit on July 19, 2016, 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 period between July 19, 2016 and July 30, 2016, I find that the Landlord has been fully compensated for that period. I also find that the Tenant must compensate the Landlord for month of August of 2016, as the Tenant remained in possession of the rental unit for that month.

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 September 01, 2016. I therefore find that the Tenant must compensate the Landlord for the loss of revenue it can be reasonably expected to experience between September 01, 2016 and September 15, 2016, which is \$400.00.

I decline to award compensation for the entire month of September, as it is entirely possible that new tenants could be located for September 15, 2016 if the Tenant vacates immediately. The Landlord retains the right to file another Application for Dispute Resolution seeking additional compensation for loss of revenue if the Tenant does not comply with the Order of Possession.

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 \$2,100.00, which is comprised of \$1,600.00 in unpaid rent for July and August of 2016, \$400.00 in lost revenue, and \$100.00 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 \$2,100.00. 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: August 31, 2016

Residential Tenancy Branch

