



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PASQUALE WELDING LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

An agent for the landlord (the "agent"), the owner of the named landlord company, the tenant and a witness for the tenant attended the teleconference hearing. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Both parties confirmed that they had a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 21, 2016 (the "10 Day Notice") before them, which was also submitted in evidence.

Preliminary and Procedural Matters

The agent for the landlord testified that in addition to the rent owed for June 2016, the tenant has subsequently not paid the rent for July, August and September of 2016. As a result, the landlord requested to amend the application to include rent owed for July, August and September 2016. The landlord also stated that the tenant continues to occupy the rental unit. I find this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the landlord's application to include \$300.00 in loss of rent for July and August; however a claim for loss of September 2016 rent is premature as rent is not due until September 15, 2016. Therefore, I grant the landlord leave to reapply for loss of September 2016 rent if the

tenant continues to occupy the rental unit on September 15, 2016. This amendment is made pursuant to section 64(3) of the *Act*.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

The parties agreed that a verbal tenancy began on March 1, 2016 and that monthly rent was \$300.00 per month and due on the 15th day of each month. The tenant did not pay a security deposit or pet damage deposit.

There is no dispute that the tenant was served with a 10 Day Notice. The tenant confirmed that she received the 10 Day Notice on June 23, 2016. The tenant claims she paid the landlord \$200.00 of the \$300.00 rent for June 2016 and has not paid rent since as she claims that there are rats in the rental unit and that she withheld the \$100.00 from June 2016 rent until repairs were made to the rental unit. The tenant did not dispute the 10 Day Notice or pay the full amount of rent indicated as owing on the 10 Day Notice. The effective date of the 10 Day Notice is listed as July 1, 2016 which automatically corrects under section 53 of the *Act* to July 3, 2016.

The owner of the named landlord company confirmed that receipts for rent payments in cash were not provided during the tenancy, and that previous rent payments were made by cash and receipts were not issued by the landlord.

Analysis

Based on the documentary evidence and testimony of the parties, and on the balance of probabilities, I find the following.

Order of Possession – As the tenant confirmed that she did not pay the full \$300.00 rent for June 2016 due June 15, 2016, or dispute the 10 Day Notice, I find the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice which in the matter before me was corrected to July 3, 2016.

The tenant continues to occupy the rental unit. Given the above and taking into account the landlord's application for an order of possession based on an undisputed 10 Day Notice, I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

Monetary claim of landlord – Based on the tenant's testimony which confirmed that the tenant withheld \$100.00 of the \$300.00 June 2016 rent and that she has not paid any rent since paying the landlord \$200.00 for June 2016 rent I find the tenant owes \$100.00 for June 2016 rent, and that the landlord suffered a loss of July 2016 rent of \$300.00 and a loss of August 2016 rent of \$300.00.

I do not award the landlord the other disputed \$200.00 portion of the June 2016 as the landlord breached section 26(2) of the *Act* which requires that a landlord issue a tenant a receipt for all rent payments paid in cash. I **caution** the landlord to comply with section 26(2) of the *Act* in the future.

Section 26(1) of the *Act* also requires that a tenant pay rent when it is due under the tenancy agreement. Therefore, I find the tenant breached section 26(1) of the *Act* by withholding \$100.00 of June 2016 rent and that the landlord suffered a loss of rent for July and August of 2016 at \$300.00 for each of the months of July and August for a total loss of rent of \$600.00. As mentioned above, a claim for loss of September 2016 rent is premature and is dismissed with leave to reapply.

As the landlord's application had merit, I grant the landlord the recovery of the \$100.00 filing fee.

Based on the above, I find the landlord has met the burden of proof and has established a total monetary claim of \$800.00 comprised of \$100.00 owing for June 2016 rent, a loss of \$300.00 for July 2016 rent, a loss of \$300.00 for August 2016 rent, plus recovery of the \$100.00 filing fee. Therefore, pursuant to section 67 of the *Act*, the landlord is granted a monetary order in the amount of **\$800.00**.

As the landlord failed to comply with section 13 of the *Act* by failing to have a written tenancy agreement, I **caution** the landlord to comply with section 13 of the *Act* for all future tenancy agreements.

Conclusion

The landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

The landlord has been granted a monetary order under section 67 in the amount of \$800.00 owing by the tenant to the landlord. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: September 14, 2016

Residential Tenancy Branch