



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, 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, 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 July 15, 2016 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant at the rental unit, via registered mail. The Landlord submitted Canada Post documentation that corroborates this statement. The Agent for the Landlord stated that this package was returned to the Landlord by Canada Post on August 08, 2016.

On July 15, 2016 the Landlord submitted 18 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that on August 10, 2016 he placed another copy of the Application for Dispute Resolution and the Notice of Hearing, plus the aforementioned 18 pages of evidence in the Tenant's mail box.

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.

Preliminary Matter

At the hearing the Agent for the Landlord asked that the Application for Dispute Resolution be amended to include all unpaid rent that is currently due. I find that it was reasonable for the Tenant to include that the Landlord is seeking to recover all of the rent that is currently due, including unpaid rent that has accrued since the Application for Dispute Resolution was filed. I therefore grant the application to amend the monetary claim to include all rent that is currently due.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession; to a monetary Order for unpaid rent; and to keep all or part of the security deposit?

Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began on January 01, 2016;
- the Tenant agreed to pay monthly rent of \$275.00 by the first day of each month; the Tenant paid a security deposit of \$100.00;
- the Tenant did not pay any rent for April, May, June, July, or August of 2016;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of May 21, 2016, was sent to the Tenant by registered mail on May 11, 2016;
- the Canada Post website indicates the Ten Day Notice to End Tenancy was delivered on May 16, 2016; and
- the Tenant is still living in the rental unit.

The Landlord submitted a Canada Post receipt that indicates registered mail was sent to the Tenant on May 11, 2016.

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 \$275.00 by the first day of each month and that the Tenant has not paid rent for April or May 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 \$550.00 in rent for April and May.

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 on May 11, 2016 the Ten Day Notice to End Tenancy that is the subject of these proceedings was served by registered mail, pursuant to section 46 of the *Act*.

Section 90 of the *Act* stipulates that a document that is served by mail is deemed to be received on the fifth day after it is mailed. I therefore find that the Tenant received the Notice to End Tenancy on May 16, 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 May 16, 2016 I find that the earliest effective date of the Notice was May 26, 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 May 26, 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 May 26, 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 May 26, 2016 and May 31, 2016, I find that the Landlord has been fully compensated for that period.

I find that the Tenant must also pay rent for June, July, and August of 2016, in the amount of \$825.00 as he remained in possession of the rental unit for those months. I find that the Tenant must also pay rent for September 01, 2016 as he was in possession of the rental unit on that day, at a daily rate of \$9.17.

The Landlord retains the right to file an Application for Dispute Resolution seeking compensation for lost revenue or additional rent if the Tenant has not vacated the rental unit by September 02, 2016.

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 \$1,484.17, which includes \$1,384.17 in unpaid rent and \$100.00 in compensation for the fee paid to file 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 \$100.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,384.17. 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: September 02, 2016

Residential Tenancy Branch

