



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Abi Tur
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPB, MND, MNR, MNDC, MNSD, O, FF

Introduction

This hearing was scheduled in response to the landlords' Application for Dispute Resolution, in which the landlord has requested an order of possession based on a breach of the tenancy agreement, compensation for damage to the rental unit, damage or loss under the Act, unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on August 15, 2016 he personally served the tenant copies of the Application for Dispute Resolution and Notice of Hearing and evidence at the rental unit. Service occurred with the landlords' spouse present as a witness, at 7:00 p.m.

I find pursuant to section 89 and 90 of the Act the tenant was served with the hearing documents and evidence effective August 15, 2016.

On September 26, 2016 the landlord served the tenant with an amended application, increasing the sum claimed. Evidence was supplied with the amendment. The documents were served via registered mail to the rental unit and tenants' business address. A copy of the registered mail receipts and tracking numbers were supplied as evidence. These documents are deemed to have been served effective October 1, 2016 in accordance with section 89 and 90 of the Act.

The tenant did not appear at the hearing.

Preliminary Matters

I considered the timing of the landlords' amended application and applied section 4.6 of the Residential Tenancy Rules of Procedure. Section 4.6 of the Rules provides:

4.6 Serving an Amendment to an Application for Dispute Resolution

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

*In any event, **a copy of the amended application and supporting evidence must be received by the respondent(s) not less than 14 days before the hearing.***

See also Rule 3 [Serving the application and submitting and exchanging evidence].

(Emphasis added)

As the amended application was not given in accordance with the Rules of Procedure, at least 14 days before the hearing, I refused to accept the amendment. The landlord has leave to reapply.

Section 3.4 of the Rules also requires service of documents not given with the application to be served not less than 14 days before a hearing. As the documents supplied with the amended application could have been available within the required time limit I set that evidence aside.

I considered the landlords' request to add a claim for unpaid rent up to the time of this hearing. Section 4.2 of the Rules of Procedure provides:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

Therefore, as rent is the most basic term of a tenancy I find that the application is amended to include a claim for unpaid per diem rent owed up to the time of this hearing.

The application details set out a request for an order of possession based on the end of a fixed-term tenancy agreement.

As the application has named a respondent not included as a tenant on the tenancy agreement the application has been amended to remove that name.

Issue(s) to be Decided

Is the landlord entitled to an order of possession based on the end of a fixed-term tenancy?

Is the landlord entitled to a monetary order for unpaid rent revenue?

May the landlord retain the security deposit paid by the tenant?

Background and Evidence

The tenancy commenced on November 1, 2015, rent is \$2,500.00 per month, due on the first day of each month. A security deposit in the sum of \$775.00 was paid. The tenancy agreement supplied as evidence indicates that the tenancy was a fixed term ending on July 31, 2016. The parties each initialed this section of the agreement.

The landlord stated that the tenant has not made any rent payment since the fixed term ended. The landlord is owed rent in the sum of \$2,500.00 for August, September and October, 2016 and has requested compensation.

As the tenant has not vacated as required by the tenancy agreement, the landlord has requested an order of possession.

Analysis

Section 44 of the Act sets out how a tenancy ends. Subsection 44(1)(b) provides:

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy.

As the parties signed a tenancy agreement that ended effective July 31, 2016, requiring vacant possession and no rent has been paid since that time, I find, pursuant to section 44(b) of the Act that the tenancy ended on that date.

Residential Tenancy Branch policy recognizes that when a tenancy ends and the tenant remains in the rental unit the landlord is entitled to per diem rent. Therefore, I find that the tenant has been over-holding in the rental unit and that the landlord is entitled to compensation for per diem rent owed for each day since August 1, 2016.

Therefore I find that the landlord is entitled to compensation in the sum of \$82.19 per day from August 1, 2016 to October 6, 2016 in the sum of \$5,493.14.

The balance of the claim is dismissed with leave to reapply within the legislated time limit.

The landlord is entitled to retain the \$775.00 security deposit in partial satisfaction of the claim.

The landlord has been granted an order of possession that is effective two days after service to 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 is entitled to recover the \$100.00 filing fee from the tenant.

Based on these determinations I grant the landlord a monetary order for the balance of \$4,818.14. 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.

Conclusion

The landlord is entitled to an order of possession based on the end of a fixed term tenancy.

The landlord is entitled to a monetary order for loss of rent revenue.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

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: October 06, 2016

Residential Tenancy Branch