



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, OPB, MND, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an order of possession for unpaid rent and breach of a material term of the tenancy agreement, a monetary order for unpaid rent and damage to the rental unit, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

At the start of the hearing I applied section 2.3 of the Residential Tenancy Rules of Procedure; which provides:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The landlord has requested compensation for damage to the rental unit. The tenancy has yet to be ended in accordance with the Act. Therefore, I determined that the claim for damage was premature and not sufficiently related to the balance of the claim. The landlord has leave to reapply for damage to the rental unit. Further, the application did not set out a monetary amount for damage.

The hearing proceeded to consider the request to end the tenancy for unpaid rent. A notice ending tenancy for cause was not provided as evidence.

The tenant confirmed receipt of the hearing documents on September 1, 2016 and evidence included with those documents.

The landlord some black and white faxed photographs to the Residential Tenancy Branch; that evidence was not given to the tenant and was set aside.

Section 4.2 of the Residential Tenancy Branch 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.

As rent is the most basic term of a tenancy I find that the application is amended to include any unpaid rent and per diem rent to the date of the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

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

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

Background and Evidence

The tenancy commenced on March 20, 2016. Rent is \$600.00 due on the first day of each month. A security deposit in the sum of \$300.00 was paid. A tenancy agreement was signed; a copy was not supplied as evidence.

The tenant has paid rent by cash. The landlord said that as the tenant did not request receipts, they were not issued.

There was no dispute that the tenant owed \$40.00 in June 2016 rent and that in July 2016 \$500.00 was paid. The tenant confirmed receipt of a 10 day Notice to end tenancy issued on July 6, 2016, on that date.

The tenant confirmed receipt of a second 10 day Notice to end tenancy for unpaid rent that was issued on August 2, 2016 and received on August 8, 2016. The tenant confirmed that no rent has been paid since the \$500.00 given to the landlord in July.

The August 2, 2016 Notice indicated that the Notice would be automatically cancelled if the landlord received \$740.00 (\$40.00 June, \$100 July and \$600.00 August, 2016) within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days. The Notice had an effective date of August 12, 2016.

There have been other issues in this tenancy; however those were not relevant to them matter of rent due to the landlord.

Analysis

The tenant confirmed receipt of the July 6, 2016 Notice on July 6, 2016 and the August 2, 2016 Notice on August 8, 2016. I have relied on the most recent Notice in establishing the end date of the tenancy.

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, as the tenant received the Notice on August 8, 2016 I find that the effective date of this Notice to End Tenancy was August 13, 2016.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on August 13, 2016, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenant has confirmed that rent has not been paid since July 2016 and that the landlord is entitled to the sums owed.

Therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; August 13, 2016.

Residential Tenancy Branch policy suggests that a tenant is not liable to pay rent after a tenancy agreement has ended. If a tenant remains in possession of the premises (over holds) policy suggests the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises.

Therefore, I find that the landlord is entitled to unpaid rent in the sum of \$40.00 for June, \$600.00 for July and \$256.50 from August 1, to 13, 2016.

I find that the landlord is entitled to per diem rent from August 14 to October 6, 2016 inclusive in the sum of \$19.73 per day in the sum of \$1,061.88. The total owed is calculated based on \$600.00 rent owed each month.

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

As the landlords' claim has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the \$300.00 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.

Based on these determinations I grant the landlord a monetary Order for the balance of \$861.88. 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.

The landlord was informed that any cash payment made for rent must result in a receipt, in accordance with section 26(2) of the Act.

Conclusion

The landlord is entitled to an order of possession and monetary order for unpaid rent and per diem rent.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

The balance of the claim is dismissed with leave to reapply.

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