



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MND, MNDC, MNSD, FF, CNR

Introduction

This was a cross-application hearing.

On August 16, 2016 the tenant applied to cancel a 10 day Notice to end tenancy for unpaid rent.

On August 13, 2016 the landlord applied requesting compensation for unpaid rent, damage to the rental unit, damage or loss under the Act; to retain the security deposit and an order of possession based on unpaid rent and utilities and to recover the filing fee costs.

The landlord was present at the scheduled time of the hearing. The landlord provided affirmed testimony that on August 19, 2016 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail to the address noted on the application. A Canada Post tracking number was provided as evidence of service. The landlord said that the tenant signed accepting the mail on August 22, 2016.

These documents are deemed to have been served in accordance with section 89 of the Act, on the date the mail was accepted by the tenant.

The tenant did not appear at the hearing. The landlord confirmed receipt of the tenants' hearing documents.

Preliminary Matters

The tenant remains in the rental unit. The landlord has made a claim for damage to the rental unit. Section 2.3 of the Residential Tenancy Rules of Procedure was applied:

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.

Therefore, the matters related to damage to the rental unit were severed from the application. The landlord has leave to reapply.

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.

Rent and payment to occupy a rental unit are the most basic terms of a tenancy. Therefore, the application has been amended to include the loss of rent revenue to the date of this 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 and loss of rent revenue?

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

Background and Evidence

The tenancy commenced on April 1, 2016. Rent is \$850.00 due on the first day of each month. A security deposit in the sum of \$475.00 was paid. Hydro, gas and internet services were included; the tenant was to pay 30%. The tenancy agreement does not include a notation setting the percentage of utilities that must be paid. A copy of the tenancy agreement was provided.

The landlord stated that on August 4, 2016 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of August 14, 2016, was served by posting to the tenants' door.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$850.00 rent and \$181.40 in utilities 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 tenant disputed the Notice.

The landlord provided copies of hydro, gas and internet bills. The landlord has claimed the following 30% cost of total utilities for the home:

- \$127.40 internet to August 1, 2016;
- \$143.86 hydro to August 27, 2016; and
- \$84.03 gas to August 29, 2016.

The landlord has not received any rent payment since July 2016 and has claimed unpaid August rent.

Analysis

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. Therefore, I find that the tenant received the Notice to end tenancy on August 7, 2016.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on August 7, 2016, I find that the earliest effective date of the Notice is August 17, 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 Notice to End Tenancy was August 17, 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 17, 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 disputed the Notice but did not come to the hearing in support of the application.

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 17, 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. There was no evidence before me that the tenant paid rent up to the end of the tenancy or any per diem rent since the tenancy ended.

Therefore, I find that the landlord is entitled to unpaid rent from August 1 to August 17, 2016 and occupation rent (\$27.95 per day) from August 18 to October 11, 2016 inclusive in the sum of \$2,007.45.

In the absence of the tenant I find that the landlord is entitled to the sums claimed for utility and internet costs totaling \$355.29. The tenant did not attend the hearing to oppose the claim.

The landlord included a claim for future utility costs. That portion of the claim is dismissed with leave to reapply.

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 \$425.00 security deposit in partial satisfaction of the claim.

Based on these determinations I grant the landlord a monetary order for the balance of \$2,037.74. 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 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.

As the tenant failed to attend the hearing I find that the tenants' application is dismissed.

Conclusion

The landlord is entitled to an order of possession and monetary order for unpaid rent, loss of rent revenue and utilities.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

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

The tenants' application is dismissed.

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 11, 2016

Residential Tenancy Branch