



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing was scheduled to hear matters pertaining to the Landlord's application for Dispute Resolution filed on August 11, 2016. The Landlord filed seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

The hearing was conducted via teleconference and was attended by the Landlord. No one was in attendance on behalf of the Tenant. The Landlord testified the Tenant was initially served notice of their application and Notice of hearing documents by registered mail on August 15, 2016 to the rental unit. That notice was served two days after the Tenant had vacated the unit.

The Landlord asserted the Tenant was served notice of her application and hearing in a second manner. She submitted copies of emails into evidence which were between her and the Tenant dated August 19, 2016. The Landlord noted that her email sent at 9:32 a.m. to the Tenant had a pdf attachment which included copies of her application and Notice of hearing documents. That evidence included a copy of the Tenant's email response that was sent to the Landlord the same day at 10:02 a.m. The Landlord argued the Tenant's response was proof the Tenant had received her application and hearing documents.

Section 62(2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.

Section 71(2)(c) of the *Act* provides that the director may order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

After consideration of the foregoing, and pursuant to sections 62 and 71 of the *Act*, I find the Tenant was sufficiently served notice of this proceeding. Accordingly, I continued to hear the undisputed evidence of the Landlord in absence of the Tenant.

Issue(s) to be Decided

1. Has the Landlord regained possession of the rental unit?
2. Has the Landlord proven entitlement to a monetary order of unpaid rent and/or utilities?

Background and Evidence

The parties entered into a verbal month to month tenancy agreement which began on May 1, 2015 for the upper level of the house. Rent for the upper level of the house was \$1,800.00 and was payable on or before the first of each month. On or around May 1, 2015 the Tenant paid \$600.00 as the security deposit plus \$50.00 as the pet deposit.

Effective June 1, 2015, the parties entered into a new verbal agreement whereby the Tenant would rent the entire house for \$2,300.00 per month. No additional deposits were paid.

When the Tenant failed to pay July 2016 and August 2016 rents in full the Landlord issued the Tenant a 10 Day Notice to end tenancy dated August 2, 2016. The Landlord testified she had previously requested an inspection of the house and when she conducted that inspection on August 2, 2016 she left the 10 Day Notice on the coffee table. A copy of that Notice was submitted into evidence listing \$3,450.00 as unpaid rent that was due August 1, 2016 and an effective date of August 15, 2016.

The Landlord submitted that when she attended the rental unit with a realtor on August 13, 2016 they found the Tenant had moved out and left someone else living in the basement suite. The Landlord stated she regained possession of the rental unit on August 15, 2016 based on the effective date of the 10 Day Notice.

The Landlord stated she felt sorry for the female who was left occupying the basement suite so she entered into a separate verbal agreement with her so she could stay occupying the basement suite for the full month of August 2016. The Landlord submitted she received \$400.00 from the basement tenant, as payment for partial rent in August 2016 (\$800.00 rent less \$400.00 returned deposit to basement suite tenant). As a result The Landlord is now seeking to recover the balance of unpaid rent for July and August 2016 in the amount of \$3,050.00 (\$3,450.00 - \$400.00).

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

Based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act* (the Act).

In this matter, the Tenant did not dispute the 10 Day Notice and did not pay the outstanding rent. Rather, the Tenant simply vacated the rental unit prior to the effective date of the Notice.

Based on the foregoing, I find the Tenant was conclusively presumed to have accepted that the tenancy ended on August 15, 2016. From her own submissions the Landlord regained possession of the rental unit on August 15, 2016. As such, the request for an Order of Possession was withdrawn.

The Landlord claimed unpaid rent of \$3,050.00 (\$3,450.00 - \$400.00) that was due August 1, 2016, in accordance with section 26 of the Act which stipulates a tenant must pay rent in accordance with the tenancy agreement. I accept the undisputed evidence of the Landlord and I grant the application for unpaid rent in the amount of **\$3050.00**.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the Act.

The Landlord has been issued a Monetary Order in the amount of **\$3,150.00** (\$3,050.00 + \$100.00). The monetary order is enforceable through small claims court after service upon the Tenant.

Conclusion

The Landlord was successful with her application and was granted a Monetary Order in the amount of \$3,150.00.

This decision is final, legally binding, 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: November 02, 2016

Residential Tenancy Branch

