



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on September 15, 2016 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities; and
- an order of possession for unpaid rent or utilities.

The Landlord attended the hearing on her own behalf. The Tenant attended the hearing on his own behalf. Both parties provided their solemn affirmation.

The Landlord testified that the Tenant was served with his Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, in person, on September 21, 2016. The Tenant acknowledged receipt on that date. Accordingly, I find the Tenant was duly served with these documents on that date. The Tenant did not submit any documentary evidence.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the beginning of the hearing, the Tenant had some difficulty calling into the telephone conference. However, after several attempts, he was successful in doing so. I am satisfied that I have heard the full oral testimony of the Tenant as it relates to the Landlord's Application.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to an order of possession for unpaid rent or utilities?

Background and Evidence

The Landlord provided with her documentary evidence a copy of the tenancy agreement between the parties. It confirms a month-to-month tenancy began on July 1, 2016. Rent in the amount of \$620.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$310.00 at the beginning of the tenancy.

The Landlord testified that rent was not paid when due on September 1, 2016. Accordingly, the Landlord issued the 10 Day Notice. The Landlord's evidence was that the 10 Day Notice was served on the Tenant, in person, on September 2, 2016, which the Tenant did not dispute.

The Landlord also testified that the Tenant has not paid rent for the months of October and November 2016. Currently, rent in the amount of \$1,860.00 remains outstanding. The Tenant continues to occupy the rental unit. The Landlord requested that the security deposit be applied to any monetary order she is entitled to.

In reply, the Tenant conceded he has not paid rent as alleged. However, he stated that when he tried to pay rent for September 2016, the Landlord refused to accept it. In addition, the Tenant testified he has withheld rent because the Landlord has refused to reimburse any of the \$1,750.00 he claimed to have paid to deal with a mold problem in the rental unit.

The Tenant also testified that his girlfriend is pregnant, that he lost his job for a brief period but is now employed, and that there is a mouse problem in the rental unit that he cannot afford to address.

Analysis

Based on the affirmed oral testimony and the documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. In this case, the Landlord testified, and I find, that the Tenant has not paid rent since September 1, 2016, and that rent in the amount of \$1,860.00 remains outstanding. I am not satisfied the Tenant was entitled to withhold rent. Accordingly, I find the Landlord has demonstrated an entitlement to a monetary award of \$1,860.00 for unpaid rent.

When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. In this case, I find that the 10 Day Notice was duly served on the Tenant on September 2, 2016. A tenant who receives a notice to end tenancy and wishes to dispute it has five days to either pay rent or file an application for dispute resolution. When a tenant does not pay rent or file an application for dispute resolution, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

In this case, the Tenant did not pay rent or file an application for dispute resolution in the applicable time period. Accordingly, the Tenant is conclusively presumed to have accepted the end of the tenancy. However, the Tenant continues to occupy the rental unit. As a result, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

Having been successful, I find the Landlord is also entitled to recover the \$100.00 filing fee paid to make this Application.

During the hearing, the Landlord requested that the security deposit (\$310.00) be applied to any monetary order I grant, which I allow. Accordingly, pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$1,650.00, which consists of \$1,860.00 for unpaid rent and \$100.00 for recovery of the filing fee, **less** the security deposit of \$310.00.

Conclusion

I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenant. This Order may be filed in and enforced as an order of the Supreme Court of British Columbia.

I grant the Landlord a monetary order in the amount of \$1,650.00. This Order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: November 9, 2016

Residential Tenancy Branch