



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 scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an order of possession for unpaid rent, a monetary order for unpaid rent and utilities and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on September 23, 2016 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent to the tenant via registered mail to the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service.

The landlord submitted a copy of the envelope; returned by Canada Post marked as unclaimed.

A refusal to claim registered mail does not allow a party to avoid service or provide grounds for review consideration. Therefore, I find these documents are deemed to have been served on the fifth day after mailing, in accordance with section 89 and 90 of the Act.

Further, the landlord spoke with the tenant the day prior to the hearing and told the tenant a hearing was being held the next day and the tenant responded by slamming the door of the rental unit.

The tenant did not appear at 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?

Background and Evidence

The tenancy commenced on October 15, 2012. The landlord is holding a security deposit in the sum of \$450.00. Rent is \$900.00 due on the first day of each month. A copy of the tenancy agreement was supplied as evidence. The second page of the agreement was missing, but the landlord provided testimony in relation to the terms of the tenancy.

The landlord stated that on September 2, 2016 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of September 12, 2016, was served by posting to the tenants' door.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,000.00 rent and \$1,600.00 in utility costs 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 landlord has claimed unpaid rent in the sum of \$100.00 for August 2016 and \$900.00 per month for September, October and November, 2016; totaling \$2,800.00.

The landlord withdrew the claim for utilities and has leave to reapply.

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 September 5, 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 September 5, 2016, I find that the earliest effective date of the Notice is September 15, 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 September 15, 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 September 15, 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. In the circumstances before me I have no evidence that the tenant exercised either of these rights; 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; September 15, 2016.

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 the tenancy is ending beyond the midway point of the month the application has been amended to include a claim for loss of rent revenue to the end of November, 2016. This is a reasonably anticipated loss.

In the absence of evidence to the contrary, I find that the tenant has not paid rent and per diem in the amount of \$2,800.00 from August to November 2016, inclusive. As the tenancy ended on September 15, 2016 the sum owed to the landlord beyond that date represents per diem rent to the date of this hearing and loss of rent revenue to the end of November, 2016.

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.

The landlord indicated that they would like to retain the security deposit. Therefore, pursuant to section 72 of the Act, I find that the landlord is entitled to retain the \$450.00 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 \$2,450.00. 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 and monetary order for unpaid rent.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

The claim for utilities is dismissed with leave to reapply within the legislated time limit.

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: November 17, 2016

Residential Tenancy Branch