



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, 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, a monetary order for unpaid rent and loss of rent revenue, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

At the start of the hearing I introduced myself; the landlord was present. The hearing process was explained and evidence was reviewed.

Seven minutes after the scheduled start of the hearing the tenant entered the conference call hearing. The tenant was affirmed and introductions were completed. The application and evidence was reviewed with the tenant.

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 February 14, 2016. Rent is \$800.00 due on the first day of each month. The landlord is holding a security deposit in the sum of \$400.00. A copy of the tenancy agreement was supplied as evidence.

The landlord stated that on October 11, 2016 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of October 22, 2016, was handed to the tenant, at the rental unit on October 11, 2016. The landlord submitted a proof of service document, signed by the tenant confirming receipt of the Notice.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$800.00 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 parties agreed that when a government ministry sent the landlord an \$800.00 cheque in late September 2016, that cheque was chased and \$750.00 given to the tenant for use toward seeking a new rental unit. The remaining \$50.00 was applied to rent owed in February 2016. The tenant signed a receipt, supplied as evidence, setting out the agreement. The tenant confirmed that October 2016 rent sent by the ministry was not applied to October 2016 rent.

The tenant confirmed that no rent has been paid since February 2016.

The landlord has claimed unpaid rent and loss of rent revenue from October to the end of December 2016 in the sum of \$2,400.00.

Analysis

I find that the tenant received the 10 day Notice to end tenancy on October 11, 2016; the date confirmed by the tenant.

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 received this Notice on October 11, 2016 I find that the earliest effective date of the Notice is October 22, 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 October 22, 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 rent has not been paid since September 2016 and that the tenant did not dispute the Notice. 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; October 22, 2016.

Therefore, I find that the landlord is entitled to compensation for unpaid rent to October 22, 2016 and per diem rent and loss of rent revenue to December 31, 2016 in the sum of \$2,400.00. The landlord will not likely obtain possession and locate a new tenant before the end of December.

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 \$400.00 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 \$2,100.00. 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

The landlord is entitled to a monetary order for unpaid rent and loss of rent revenue.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

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: December 13, 2016

Residential Tenancy Branch