



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

At the hearing the Agent for the Landlord withdrew the application to retain the security deposit.

The Agent for the Landlord stated that on January 09, 2017 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted to the Residential Tenancy Branch on January 13, 2017 were sent to the Tenant, via registered mail, at the rental unit. The Agent for the Landlord cited a tracking number that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

On January 17, 2017 the Landlord submitted a second package of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this is a duplicate copy of evidence that was submitted on January 13, 2017.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession; to a monetary Order for unpaid rent and for compensation for lost revenue?

Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began on July 01, 2016;

- the Tenant agreed to pay monthly rent of \$1,075.00 by the first day of each month;
- when this Application for Dispute Resolution was filed the Tenant owed \$2,245.00 in rent for the period ending January 31, 2017;
- since the Application for Dispute Resolution was filed the Tenant paid rent of \$400.00, leave a balance owing of \$1,845.00;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of December 16, 2016, was posted on the door of the rental unit on December 03, 2016; and
- the Tenant is still living in the rental unit.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,075.00 by the first day of each month; that rent was outstanding on December 03, 2016; and the Tenant currently owes \$770.00 in rent for December of 2016. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$770.00 in outstanding rent to the Landlord.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. On the basis of the undisputed evidence I find that the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on December 03, 2016.

Section 46 of the *Act* stipulates that a Tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I grant the landlord an Order of Possession.

As the Tenant did not vacate the rental unit by the effective date of the notice, which was December 16, 2016, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay rent for the period between December 16, 2016 and December 31, 2016, I find that the Landlord has been fully compensated for that month. I also find that the Tenant must compensate the Landlord for month of January of 2017, in the amount of \$1,075.00, as the Tenant remained in the possession of the unit for that month.

I find that the Tenant fundamentally breached the tenancy agreement when the Tenant did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when the Tenant did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that the continued occupancy of the rental

unit makes it difficult, if not impossible, for the Landlord to find new tenants prior to February 15, 2017. I therefore find that the Tenant must compensate the Landlord for the loss of revenue it can be reasonably expected to experience between February 01, 2017 and February 30, 2017, which is \$537.50.

I decline to award compensation for the entire month of February, as it is entirely possible that new tenants could be located for February 15, 2017 if the Tenant vacates immediately. The Landlord retains the right to file another Application for Dispute Resolution seeking additional compensation for loss of revenue if the Tenant's failure to vacate results in additional lost revenue.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon 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.

The Landlord has established a monetary claim, in the amount of \$2,482.50, which includes \$1,845.00 in unpaid rent, \$537.50 in lost revenue, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$2,482.50. In the event 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 31, 2017

Residential Tenancy Branch