



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SANDY CREEK PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, ET

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, to retain all or part of the security deposit, and to end the tenancy early.

It is readily apparent from information on the Monetary Order Worksheet that the Landlord is seeking to recover the cost of filing this Application and I find it appropriate to consider that claim at these proceedings.

The Agent for the Landlord stated that on December 21, 2016 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted with the Application for Dispute Resolution were sent to each Tenant, via registered mail, at the rental unit.

The Agent for the Landlord stated that the package that was mailed to the female Tenant was returned to the Landlord as unclaimed. She cited a tracking number for this package, which she located on the envelope that was returned to the Landlord.

The Agent for the Landlord stated that the package that was mailed to the male Tenant was not returned to the Landlord. She was unable to locate the tracking number for this package.

On the basis of the testimony of the Agent for the Landlord and 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 Tenants did not appear at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession; to end the tenancy early; to a monetary Order for unpaid rent or utilities; and to keep all or part of the security deposit?

Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began on November 01, 2016;
- the Tenants were permitted to move into the rental unit prior to the official start date of the tenancy;
- the Tenants agreed to pay monthly rent of \$1,150.00 by the first day of each month;
- the Tenants paid a security deposit of \$575.00;
- the Tenants did not pay any rent for December of 2016 or January of 2017;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which has a declared effective date of December 20, 2016, was posted on the door of the rental unit on December 08, 2016; and
- the Tenants are still occupying the rental unit.

Analysis

On the basis of the undisputed evidence, I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$1,150.00 by the first day of each month and that the Tenants have not paid rent for December of 2016. As the Tenants were required to pay rent on December 01, 2016, pursuant to section 26(1) of the *Act*, I find that the Tenants must pay \$1,150.00 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 08, 2016.

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. I therefore find that the Tenant received the Notice to End Tenancy on December 11, 2016.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on December 11, I find that the earliest effective date of the Notice was December 21, 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 Ten Day Notice to End Tenancy was December 21, 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 Tenants exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenants accepted that the tenancy has ended. On this basis I grant the landlord an Order of Possession.

As the Landlord has been granted an Order of Possession on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent, I find there is no need to consider the Landlord's application to end the tenancy early.

As the Tenant did not vacate the rental unit by December 21, 2016, I find that the Tenants are obligated to pay rent, on a per diem basis, for the days the Tenants remained in possession of the rental unit. As the Tenants have already been ordered to pay rent for the period between December 21, 2016 and December 31, 2016, I find that the Landlord has been fully compensated for that period. I also find that the Tenants must also compensate the Landlord for 18 days in January that the Tenants remained in possession of the rental unit, at a daily rate of \$37.10, which equates to \$667.80.

I find that the Tenants fundamentally breached the tenancy agreement when the Tenants did not pay rent when it was due. I find that the Tenants fundamentally breached section 46(5) of the *Act* when the Tenants 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 for the remainder of January of 2017. I therefore find that the Tenants must compensate the Landlord for the loss of revenue it can be reasonably expected to experience between January 19, 2017 and January 31, 2017, in the amount of \$482.20.

I decline to award compensation for loss of revenue for the month of February as it is entirely possible that the Tenants will vacate the rental unit prior to January 31, 2017 and that, with reasonable diligence, the Landlord will be able to locate a new tenant. The Landlord retains the right to file another Application for Dispute Resolution seeking additional compensation for loss of revenue if the Landlord experiences a loss of revenue in February of 2017.

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

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenants. This Order may be served on the Tenants, 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 \$2,400.00, which includes \$2,300.00 in unpaid rent/lost revenue and \$100.00 for filing this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenants' security deposit of \$575.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,825.00. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, 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 18, 2017

Residential Tenancy Branch