



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Eviction Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNDC, OPR, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution made on December 13, 2016, in which the landlord requested an order of possession for cause and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

On December 20, 2016 the application was amended to include a request for an order of possession based on unpaid rent, compensation for unpaid rent and compensation for loss of rent revenue.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The parties were affirmed.

The tenant confirmed that the application and amended application were received on January 6, 2017; via registered mail sent on December 20, 2016. The landlord provided a Canada Post tracking number and receipt and checked the Canada Post tracking information to confirm the date of receipt.

The hearing process was explained. The parties were given an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing. The parties were able to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord withdrew the one month Notice to end tenancy for cause issued on November 18, 2016. The landlord wished to rely only on the 10 day Notice to end tenancy for unpaid rent issued on December 6, 2016.

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 for December 2016 and January 2017?

Background and Evidence

The tenancy commenced four years ago. The current landlord assumed the tenancy in February 2016 when the property was purchased. Rent is \$1,450.00 due on the first day of each month. The landlord accepts that a security deposit in the sum of \$725.00 was paid.

The tenant confirmed receipt of a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of December 16, 2016. The Notice was served by registered mail and according to the Canada Post tracking information viewed by the landlord, received by the tenant on December 15, 2016.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,450.00 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 tenant confirmed that rent has not been paid for December 2016 or January 2017. Normally someone comes to the rental unit to collect rent. The tenant said no one came for the rent in December 2016. When the tenant received the 10 day Notice the tenant did not attempt to make a payment to the landlord at the service address included on the Notice.

The landlord has claimed compensation for unpaid December 2016 and January 2017 rent in the sum of \$2,900.00.

Analysis

Section 90 of the Act stipulates that a document that is delivered by registered mail is deemed served on the fifth day after mailing. However, I find that the tenant received the Notice on December 15, 2016; the date the mail was retrieved 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 December 15, 2016, I find that the earliest effective date of the Notice is December 26, 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 December 26, 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 December 26, 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; December 26, 2016.

As the tenancy ended effective December 26, 2016 I find that since December 27, 2016 the tenant has been over holding in the rental unit. When a tenant over holds Residential Tenancy Branch policy suggests the tenant must pay per diem rent for each day they occupy the rental unit until the landlord is able to recover possession of the rental unit.

Based on the acknowledgement of the tenant I find that the tenant has not paid rent from December 1, to 26, 2016 and per diem rent from December 27, 2016 to the date of this hearing. It is unlikely the landlord can obtain possession of the rental unit prior to January 25, 2017. Therefore; I find that the landlord is entitled to compensation for unpaid rent from December 1 to 26, 2016 and per diem rent from December 27, 2016 to January 25, 2017 in the sum of \$2,613.98 (\$2,900.00 less per diem of \$47.67 for six days beyond January 25, 2017.)

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 \$725.00 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 \$1,988.98. 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 tenancy ended effective December 26, 2016.

The landlord is entitled to an order of possession.

The landlord is entitled to a monetary order for unpaid rent and per diem rent.

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: January 18, 2017

Residential Tenancy Branch