



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, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on December 9, 2016 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were handed to the tenant. Service occurred in the evening, with the witness, S.M. present. The witness provided affirmed testimony that she was present when service occurred.

The landlord said that several days prior to this hearing the tenant was reminded of the hearing and said he would attend.

I find that these documents are deemed to have been served on the day of personal delivery, in accordance with section 89 of the Act.

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?

May the landlord retain the security deposit paid by the tenant?

Background and Evidence

The tenancy commenced on September 1, 2016. Rent is \$1,350.00 per month, due on the first day of each month. The landlord is holding a security deposit in the sum of \$650.00. A copy of the signed tenancy was supplied as evidence.

The landlord has claimed compensation for unpaid rent as follows:

- \$100.00 September 2016; and
- \$975.00 for each October, November and December 2016.

The tenant has not paid January 2017 rent and the landlord requested the application be amended to include that loss.

The landlord has received \$375.00 per month from a family member who resides in the rental unit. Those payments arrive via deposit from a government ministry and applied to rent owed by the tenant.

The landlord stated that on November 2, 2016 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of November 13, 2016, was served by handing a copy of the Notice to the tenant. The tenant signed the Notice where the landlord is required to print the landlords' name. The tenant also signed the Notice in the section of the form that sets out the method of service used. A copy of the Notice was supplied.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,050.00 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.

Analysis

I find that the tenant received the 10 day Notice to end tenancy for unpaid rent on November 2, 2016; the date it was handed to 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 November 2, 2016, I find that the earliest effective date of the Notice is November 12, 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 November 13, 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.

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.

Payment of rent is what I find the most basic term of a tenancy agreement. As a result I find that the tenant could reasonably anticipate an amendment to include the loss of any rent revenue since the time the Notice ending tenancy was issued. Therefore, pursuant to section 4.2 of the Rules of Procedure, I find that the application is amended to include a loss of per diem rent in January, 2017.

I find that the tenant has over-held in the rental unit since the tenancy ended effective November 13, 2016.

When a tenant over holds Residential Tenancy Branch policy suggests the tenant must pay per diem rent for each day the tenant remains in the rental unit. Therefore, I find, in the absence of the tenant who was served with Notice of this hearing, that the landlord is entitled to compensation for unpaid rent from September to November 13, 2016 and loss of per diem rent (\$44.38/day) from November 14, 2016 to January 12, 2017 totaling \$3,557.56

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 \$650.00 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 \$3,007.56. 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 compensation 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 12, 2017

Residential Tenancy Branch