



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, CNR, O, MNR, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an 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, and to recover the fee for filing this Application for Dispute Resolution. The Landlord stated that on January 18, 2017 the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel a Notice to End Tenancy for Unpaid Rent or Utilities and for "other". The Tenant stated that on January 18, 2017 the Application for Dispute Resolution was sent to the Landlord, via registered mail. The Landlord acknowledged receipt of this document.

On January 16, 2017 the Landlord submitted 11 pages of evidence to the Residential Tenancy Branch. On January 19, 2017 the Landlord submitted 17 pages of evidence and an Amendment to an Application for Dispute Resolution, in which the Landlord applied for unpaid rent/lost revenue for February of 2017 and to retain the security deposit. The Landlord stated that on January 18, 2017 all of these documents were sent to the Tenant, via registered mail.

The Tenant stated that she received all of the documents submitted in evidence by the Landlord except a copy of the tenancy agreement and a copy of a Proof of Service. As the Tenant does not acknowledge receipt of these documents they were not accepted as evidence for these proceedings. The documents the Tenant acknowledged receiving were accepted as evidence.

The Landlord was advised that she could discuss all of her documents during the hearing and if she determined it was necessary for me to physically view the two documents the Tenant did not acknowledge receiving she could request an adjournment for the purpose of re-serving them. The hearing was concluded without a request for an adjournment.

The Tenant stated that she has a copy of the tenancy agreement with her, even though it was not served as evidence, and she referred to it during the hearing.

On January 12, 2017 the Tenant submitted 47 pages of evidence to the Residential Tenancy Branch. The Tenant stated that on January 25, 2017 she posted 4 of these pages on the Landlord's door, which were 4 pages of emails exchanged between the parties. The Landlord acknowledged receipt of these 4 pages and they were accepted as evidence for these proceedings.

On January 26, 2017 the Tenant submitted 29 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was not served to the Landlord. As the evidence was not served to the Landlord it was not accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent be set aside?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to a monetary Order for unpaid rent/lost revenue?

Is the Landlord entitled to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on May 01, 2016;
- the Tenant agreed to pay monthly rent of \$800.00 on a bi-weekly basis; and
- the Tenant paid a security deposit of \$400.00.

The Landlord stated that the Tenant was obligated to pay \$400.00 in rent on the first and the fifteenth of each month. The Tenant stated that she was obligated to pay rent on the second and last Friday of each month. The parties agree that the tenancy agreement does not declare the days in the month that rent is due.

The Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of January 16, 2016, was posted on the door of the rental unit on January 03, 2016. The Tenant stated that she did not locate this Notice to End Tenancy on the door of her rental unit and she did not receive this Notice to End Tenancy until she received the Landlord's evidence for these proceedings. She stated that the Landlord told her, via text message, that a notice to end tenancy had been served, which is why she filed her Application for Dispute Resolution seeking to cancel a notice to end tenancy.

At the hearing the Landlord and the Tenant mutually agreed to end the tenancy on February 10, 2017.

The Landlord stated that no rent was paid for January of 2017. The Tenant stated that she paid rent of \$400.00 for January on December 23, 2016. The Landlord stated that the Tenant paid \$400.00 in rent for December of 2016 on December 24, 2016.

The Landlord submitted a receipt, dated December 24, 2016, which declares that the Tenant paid \$400.00 in rent for December of 2016. The Tenant stated that this receipt was completed incorrectly and that this payment was made for rent for January.

The Tenant stated that the power to the rental unit was cut off on January 11, 2017 and January 12, 2017. The Landlord stated that she did not intentionally cut off the power in the rental unit at that time; that they were using a space heater on her side of the residential complex during that period; and that the space heater interrupted power on their side of the residential complex, which may have impacted the Tenant's power.

The Landlord stated that she understands she does not have the right to shut off the Tenant's power; she has never intentionally done so; and she will not do so for the remainder of the tenancy.

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 \$800.00.

I find that there is insufficient evidence to corroborate the Landlord's testimony that the Tenant was obligated to pay \$400.00 in rent on the first and the fifteenth of each month. In reaching this conclusion I was heavily influenced by the fact the Tenant disputes this testimony and the tenancy agreement does not establish the days in the month that rent is due.

On the basis of the testimony of the Tenant I find that rent of \$400.00 for February was due no later than February 10, 2016 and that the second payment of \$400.00 was due no later than February 24, 2017.

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 Landlord's testimony and the absence of evidence to the contrary, I find that a Ten Day Notice to End Tenancy for Unpaid Rent, dated January 03, 2017 was posted on the door of the rental unit. On the basis of the Tenant's testimony and the absence of evidence to the contrary, I find that the Tenant did not receive the Ten Day Notice to End Tenancy that was posted on her door. I find that both statements can be true, as it is entirely possible that the Notice to End tenancy was removed by a third party.

As there is insufficient evidence to establish that the Tenant received the Ten Day Notice to End Tenancy for Unpaid Rent that is the subject of this dispute prior to receiving it as evidence for these proceedings. I therefore grant the Tenant's application to set aside a Notice to End Tenancy and I dismiss the Landlord's application for an Order of Possession on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent.

I find that during the hearing the Landlord and the Tenant mutually agreed to end the tenancy on February 10, 2017. On this basis of that mutual agreement I grant the landlord an Order of Possession.

On the basis of the receipt dated December 24, 2016, I find that this receipt relates to a \$400.00 payment made for rent for December of 2016. I find that the Tenant has submitted no evidence to corroborate her testimony that on December 23, 2016 she paid \$400.00 in rent for January of 2017 or that refutes the Landlord's testimony that the Tenant did not pay any rent for January of 2017.

When a landlord regularly provides receipts for rent there is an expectation that a tenant will produce a receipt for every rent payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a payment has not been made. As the Landlord provided receipts for rent payments during this tenancy and the Tenant is unable to provide proof that any rent was paid for January of 2017, I find that no rent has been paid for January of 2017. I therefore find that the Tenant owes the Landlord \$800.00 in rent for January of 2017.

As I have concluded that the Tenant was obligated to pay rent of \$400.00 no later than February 10, 2017 and the Tenant was entitled to occupy the rental unit for a portion of February 10, 2017, I find that the Tenant must pay rent of \$400.00 for February of 2017.

As this tenancy is ending, by mutual consent, on February 10, 2017, I find that the Tenant is not obligated to pay any remaining rent for February of 2017. As this tenancy ended by mutual consent, I find that the Landlord is not currently entitled to compensation for lost revenue for the remainder of February of 2017. In the event that the rental unit is not left in good condition at the end of the tenancy, which impacts the Landlord's ability to re-rent the unit for February 15, 2017, the Landlord retains the right to file another Application for Dispute resolution claim compensation for lost revenue.

As the Landlord is aware that she does not have the right to shut off the Tenant's power and she stated that has no intentions of doing so for the remainder of the tenancy, I find there is no need to issue an Order preventing the Landlord from interfering with the Tenant's power source.

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

On the basis of the mutual agreement to end the tenancy I grant the Landlord an Order of Possession that is effective **at 1:00 p.m. on February 10, 2017**. 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 1,300.00, which includes \$1,200.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$400.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$900.00. 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: February 09, 2017

Residential Tenancy Branch