



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's Application made December 8, 2017: CNR; AS

Landlord's Application made December 21, 2017: OPR; MNR; FF

Introduction

This Hearing was scheduled to hear cross applications. The Tenant seeks to cancel a Notice to End Tenancy for Unpaid rent issued December 4, 2017 (the "Notice"); and an Order that the Tenant be allowed to assign the tenancy agreement or sublet the rental unit.

The Landlord seeks an Order of Possession; a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenant.

Both parties attended the Hearing and gave affirmed testimony.

The Tenant IB testified that she hand delivered her Notice of Hearing documents to the Landlord's office, but stated that she could not remember on what day she dropped the documents off. The Landlord's agents acknowledged receipt of the documents and stated that they had no issue with service.

The Landlord's agents testified that they mailed the Landlord's Notice of Hearing documents to each one of the Tenants, by registered mail to the rental unit, on December 22, 2017. They provided the tracking numbers for the registered documents. The Landlord's agents stated that both of the registered packages were returned to the Landlord, unclaimed. I find that the Landlord was duly served with the Tenant's Notice of Hearing documents.

The Tenant stated that the Tenant WF moved out of the rental unit at some point between September 21 and September 30, 2017. The Landlord's agents acknowledged that they were aware that the Tenant WF had moved out, but that she did not provide the Landlord with a forwarding address.

Section 89(1)(c) of the Act provides that service may be effected by registered mail to the address where the party resides. Section 90 of the Act deems such service to be effective 5 days after mailing the document, in this case December 27, 2017. Based on the testimony of both parties, I find that the Tenant WF was not duly served with notice of this Hearing because she was not residing at the rental unit on December 27, 2017. I find that the Tenant IB was duly served on December 27, 2017.

During the course of the Hearing, the Tenant stated that she has decided to move out of the rental unit, but that she is not ready to move until on or about January 24, 2018. The Landlord agreed to an Order of Possession effective January 25, 2018. Therefore, the parties having agreed to end the tenancy on January 25, 2018, the Tenant's Application is withdrawn. The Landlord is hereby provided with an Order of Possession effective 1:00 p.m., January 25, 2018.

Issue(s) to be Decided

Is the Landlord entitled to a monetary award for unpaid rent?

Relevant Background and Evidence

This tenancy began on July 1, 2017. Monthly rent is \$950.00, but the Tenants were "credited" \$75.00 per month for the first year of the tenancy. Therefore, rent for the first year of the tenancy is \$875.00. The Tenants paid a security deposit in the amount of \$399.00 on June 21, 2017.

The Tenant stated that she paid \$800.00 on December 18, 2017, but still owes \$75.00 for December's rent. She acknowledged that she has not paid anything towards January's rent.

The Landlord's agent testified that they only received \$425.00 towards December's rent on January 2, 2018, and therefore \$450.00 remains outstanding for December's rent. The Landlord's agent stated that the Landlord is also seeking loss of revenue for the month of January, 2018, in the amount of \$875.00.

Neither party provided documentary evidence to support their claim with respect to the amount that the Tenant paid towards December, 2017 rent.

Analysis

The onus is on the Landlord to provide sufficient evidence to support their monetary claim. In this case, the Landlord did not provide documents showing the amount of rent that was paid towards December rent, or on what day it was paid. The Tenant acknowledged owing \$75.00 towards December rent, and therefore I allow the Landlord's claim in the amount of \$75.00 for unpaid rent for December, 2017.

Pursuant to Rule 4.2 of the Rules of Procedure, I hereby amend the Landlord's Application to include loss of revenue for the month of January, 2018. This portion of its claim is allowed in the amount of \$875.00.

The Landlord's Application had merit and I find that it is entitled to recover the cost of the \$100.00 filing fee from the Tenant.

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the \$399.00 security deposit in partial satisfaction of its monetary award.

I have found that the Tenant WF was not duly served with the Notice of Hearing documents and therefore, the Landlord is hereby provided with a Monetary Order against the Tenant IB only, calculated as follows:

Unpaid rent for December, 2017	\$75.00
Loss of revenue for January, 2018	\$875.00
Recovery of the filing fee	\$100.00
Less set off of security deposit	<u><\$399.00></u>
TOTAL	\$651.00

Conclusion

The Landlord is hereby provided with an Order of Possession **effective 1:00 p.m., January 25, 2018**, for service upon the Tenant IB. This Order may be enforced in the Supreme Court of British Columbia.

The Landlord is hereby provided with a Monetary Order in the amount of **\$651.00** for service upon the Tenant IB. This Order may be enforced in the Provincial Court of British Columbia (Small Claims 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 *Residential Tenancy Act*.

Dated: January 19, 2018

Residential Tenancy Branch