



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNRL

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 and a monetary Order for unpaid rent or utilities.

The Landlord stated that on January 03, 2019 the Application for Dispute Resolution, the Notice of Hearing, an Amendment to the Application for Dispute Resolution, and documents the Landlord submitted to the Residential Tenancy Branch were sent to the Tenant, via registered mail. 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 Tenant did not appear at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent or utilities?

Background and Evidence

The Landlord stated that:

- this tenancy began on October 01, 2018;
- the Tenant was required to pay monthly rent of \$1,050.00 by the first day of each month;
- the Tenant did not pay any rent for December of 2018, January of 2019, or February of 2019; and

- a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of December 17, 2018, was posted on the door of the rental unit on December 07, 2018.

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 \$1,050.00 by the first day of each month and that the Tenant has not paid any of the rent that was due on December 01, 2018. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,050.00 in outstanding rent for December of 2018.

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 07, 2018.

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 10, 2018.

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 10, 2018 I find that the earliest effective date of the Notice was December 20, 2018.

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 20, 2018.

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 Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I grant the landlord an Order of Possession.

As the Tenant did not vacate the rental unit on December 20, 2018, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant lived in the unit for the month of January of 2019, I find that she is also obligated to pay rent for January of 2019, in the amount of \$1,050.00. As the Tenant continues to live in the rental unit I find that she must pay rent, on a per diem basis, for the period between February 01, 2019 and February 07, 2019, in the amount of \$262.50.

I find that the Tenant fundamentally breached the tenancy agreement when the Tenant did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when the Tenant 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 month of February and I therefore find that the Tenant must compensate the Landlord for the loss of revenue it can be reasonably expected to experience February 08, 2019 and February 28, 2019, in the amount of \$787.50.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon 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.

The Landlord has established a monetary claim, in the amount of \$3,150.00 in unpaid rent/lost revenue. Based on these determinations I grant the Landlord a monetary Order for 3,150.00. 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.

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 07, 2019

Residential Tenancy Branch