Dispute Resolution Services

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 14, 2019 the Application for Dispute Resolution and the Notice of Hearing were sent to the female Tenant, via registered mail, at the rental unit. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served to the female Tenant in accordance with section 89 of the *Residential Tenancy Act (Act);* however she did not appear at the hearing.

The Landlord stated that on January 12, 2019 the Application for Dispute Resolution and the Notice of Hearing were personally served to the male Tenant. The male Tenant acknowledged receipt of these documents.

On January 11, 2019 the Landlord submitted 9 pages of evidence to the Residential Tenancy Branch. The Landlord stated that two copies of this evidence were personally served to the male Tenant on January 13, 2019. The male Tenant stated that he received this evidence and he gave a copy of it to the female Tenant. As the male Tenant acknowledged receiving this evidence and providing a copy to the female Tenant, it was accepted as evidence for these proceedings.

The parties present at the hearing were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Preliminary Matter

The Landlord applied to amend the Application for Dispute Resolution to include unpaid rent from January and February of 2019. I find that it was reasonable for the Tenants to conclude that the Landlord is seeking to recover all of the rent that is currently due, including unpaid rent that has accrued since the Application for Dispute Resolution was filed. I therefore grant the application to amend the monetary claim to include all rent that is currently due.

Issue(s) to be Decided

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

Background and Evidence

The Landlord and the male Tenant agree that:

- the female Tenant has lived in this rental unit for several years;
- the male Tenant moved into the rental unit after the female Tenant;
- the male Tenant has lived in the rental unit for many years;
- there is a written tenancy agreement that names both tenants;
- the Tenants agreed to pay monthly rent of $885.00 by the first day of each month;
- the female Tenant paid rent of $800.00 for September of 2018;
- the male Tenant did not pay rent to the Landlord for September of 2018;
- neither Tenant paid rent to the Landlord for October of 2018;
- the male Tenant paid $442.50 to the Landlord for rent for November of 2018;
- the female did not pay rent to the Landlord for November of 2018;
- the male Tenant paid $442.50 to the Landlord for rent for December of 2018;
- the female did not pay rent to the Landlord for December of 2018;
- the Landlord did not accept any rent for January or February of 2019.

The male Tenant stated that he signed the tenancy agreement approximately three months ago. He stated that until recently he has been paying his rent to his co-tenant and he believed she was paying the monthly rent to the Landlord.

The Landlord stated that on December 20, 2018 he personally served each Tenant with a Ten Day Notice to End Tenancy, which declared that they must vacate the rental unit by January 01, 2019. The male Tenant acknowledged that the parties received these Notices.

The male Tenant stated that he did not dispute the Ten Day Notice to End Tenancy because the Landlord told him he would enter into a new tenancy agreement with him once the female Tenant was evicted, providing the male Tenant could find a new roommate.

Analysis

On the basis of the undisputed evidence I find that the Tenants have had a long term joint tenancy agreement with the Landlord. On the basis of the undisputed evidence I find that this was initially an oral tenancy agreement and that the parties did not enter into a written tenancy agreement until approximately 3 months ago.

On the basis of the undisputed evidence I find that the Tenants agreed to pay rent of $850.00 by the first day of each month. As the Tenants are co-tenants, I find they are jointly responsible for paying the monthly rent.

On the basis of the undisputed evidence I find that the rent is overdue by $3,625.00 for the period ending February 28, 2019. As the Tenants are jointly required to pay all rent that is due, pursuant to section 26(1) of the *Act*, I find that the Tenants must pay $3,625.00 in outstanding rent to the Landlord.

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 personally served to both Tenants on 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 Tenants exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenants accepted that the tenancy ended. On this basis I grant the landlord an Order of Possession. As I have ordered the Tenants to pay rent until the end of February of 2019, the Order of Possession will be effective February 28, 2019.

In adjudicating this matter I have placed no weight on the male Tenant's submission that the Landlord told the Tenant he would enter into a new tenancy agreement with him once the female Tenant was evicted, providing the male Tenant could find a new roommate. That agreement is clearly contingent on issues not relevant to these proceedings and is not, therefore, relevant to this decision. The Landlord and the male Tenant are free to enter into a new tenancy agreement in the future.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on February 28, 2019. This Order may be served on the Tenants, 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 $3,625.00, in unpaid rent and I grant the Landlord a monetary Order for this amount. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, 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 08, 2019

Residential Tenancy Branch