



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 convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary order for money owed or compensation for damage or loss, a monetary Order for damage, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant at the rental unit, via registered mail, on April 20,, 2012. 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 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

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent/loss of revenue; to compensation for damage to the rental unit; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord stated that this tenancy began on January 01, 2012; that the Tenant is required to pay monthly rent of \$1,200.00 by the first day of each month; that the Tenant paid a security deposit of \$600.00; that the Tenant only paid \$700.00 in rent for April on April 26, 2012, at which time he was advised the Landlord still wanted to end the tenancy; and that the Tenant has not paid rent for May of 2012.

The Landlord is seeking compensation for unpaid rent from April and loss of revenue from May.

The Landlord stated that he put a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of April 13, 2012, on the door of the rental unit on April 03, 2012. The Notice declared that the Tenant owed \$1,200.00 in rent that was due on April 01, 2012.

The Landlord is seeking compensation for the cost of repairing a door that leads between a storage area and a laundry area that the Landlord contends was damaged by the Tenant. Section 37 of the Act stipulates that a tenant must leave a rental unit undamaged when the unit is vacated, except for reasonable wear and tear. As this tenancy has not yet been vacated, I find that it is premature to consider this claim, as the Tenant may repair the damage prior to vacating. At the hearing the Landlord was advised that he has the right to file another Application for Compensation if the damage is not repaired as required by the *Act*.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$1,200.00 by the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant has only paid \$700.00 of the rent that was due on May 01, 2012. As he is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay the remaining rent of \$500.00 that was due on May 01, 2012.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. In the absence of evidence to the contrary, I find that Notice to End Tenancy, which directed the Tenant to vacate the rental unit by April 13, 2012, was posted on the Tenant's door on April 03, 2012.

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 April 06, 2012.

Section 46(1) of the *Act* stipulates that a 10 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 April 06, 2012, I find that the earliest effective date of the Notice was April 16, 2012.

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 Notice to End Tenancy was April 16, 2012.

Section 46 of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does

not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. In the circumstances before me 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 find that the Landlord is entitled to an Order of Possession.

As the Tenant did not vacate the rental unit by April 16, 2012, I find that he is obligated to pay rent, on a per diem basis, for the days he remained in possession of the rental unit. As he has already been ordered to pay rent for the period between April 16, 2012 and April 30, 2012, I find that the Landlord has been compensated for that period. I also find that the Tenant must compensate the Landlord for the 9 days in May that he remained in possession of the rental unit, at a daily rate of \$38.70, which equates to \$348.30.

I find that the Tenant fundamentally breached the tenancy agreement when he did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when he did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that his continued occupancy of the rental unit makes it difficult, if not impossible for the Landlord to find new tenants for the remainder of May of 2012. I therefore find that the Tenant must compensate the Landlord for the loss of revenue he is likely to experience between May 10, 2012 and May 31, 2012, which is \$851.70.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I hereby 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.

I find that the Landlord has established a monetary claim, in the amount of \$1,750.00, which is comprised of \$1,700.00 in unpaid rent/loss of revenue and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain the Tenant's security deposit, in the amount of \$600.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,150.00. 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 *Residential Tenancy Act*.

Dated: May 09, 2012.

Residential Tenancy Branch