



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, MND, MNDC, FF

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, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss; a monetary Order for damage to the rental unit; to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution. At the hearing the female Landlord withdrew the claim for compensation for damage to the rental unit.

The female Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were mailed to each Tenant at the rental unit, via registered mail, on March 26, 2013. The female Landlord cited Canada Post tracking numbers that corroborate 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 neither Tenant appeared at the hearing.

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent/lost revenue; and to keep all or part of the security deposit?

Background and Evidence

The female Landlord stated that this tenancy began on January 01, 2012; that the Tenant was required to pay monthly rent of \$900.00 by the first day of each month; that the Tenant paid a security deposit of \$450.00; and that the Tenant has paid no rent for March or April of 2013.

The female Landlord stated that she posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of March 25, 2013, on the door of the rental unit on March 12, 2013. The Landlord submitted a Proof of Service of the Notice to End

Tenancy, which was signed by the female Landlord and another tenant who witnessed the posting of this Notice. The Notice declared that the Tenant owed \$900.00 in rent that was due on March 01, 2013.

The female Landlord stated that the Tenant has not yet vacated the unit.

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 \$900.00 by the first day of each month and that the Tenant has not paid any rent for March of 2013. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$900.00 in rent for March of 2013.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Residential Tenancy Act (Act)*. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant was served with a Notice to End Tenancy that directed the Tenant to vacate the rental unit by March 25, 2013, pursuant to section 46 of the *Act*.

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 ended on March 25, 2013. As the rental unit has not yet been vacated, I find that the Landlord is entitled to an Order of Possession.

As the Tenant did not vacate the rental unit on March 25, 2013, 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 has already been ordered to pay rent for the entire month of March, I find that the Landlord has been fully compensated for that month. I also find that the Tenant must compensate the Landlord for the ten days in April that the Tenant has remained in possession of the rental unit, at a daily rate of \$30.00, which equates to \$300.00.

I find that the Tenant fundamentally breached the tenancy agreement when rent was not paid 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 made it difficult, if not impossible, for the Landlord to find new tenants for April of 2013. I therefore find that the Tenant must compensate the Landlord for the loss of revenue the Landlord will likely experience for the remainder of April, in the amount of \$600.00.

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 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 \$1,850.00, which is comprised of \$1,200.00 in unpaid rent, \$600.00 in lost revenue, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to retain the Tenant's security deposit, in the amount of \$450.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,400.00. 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: April 10, 2013

Residential Tenancy Branch

