



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR

Introduction

This hearing was initiated by way of a Direct Request Proceeding but was reconvened as a participatory hearing, as I was unable to render a decision on the basis of the information provided in the Application for Direct Request.

The reconvened hearing was held to address the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent and a monetary Order for unpaid rent from September, October, and November of 2014.

The Landlord stated that on February 18, 2015 the Notice of Hearing was sent to the Tenant, via registered mail. The Tenant acknowledged receiving this document approximately one week ago.

The Landlord stated that he personally served the Tenant with the Direct Request Proceeding package on November 20, 2014. The Tenant acknowledged receiving these documents, although she believes she received them on November 11, 2014. As the Tenant acknowledged receiving those documents, they were accepted as evidence for these proceedings.

The Landlord stated that on March 02, 2015 he faxed two letters and all the rent receipts issued for 2014 to the Residential Tenancy Branch. He stated that he personally served these documents to the Tenant on March 01, 2015. The Tenant acknowledged receipt of these documents.

The Landlord was advised that the documents he submitted on March 02, 2015 were not submitted in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure and that I did not have those documents in my possession. He was advised that since I did not have the documents in my possession I could not refer to them, although he was permitted to discuss those documents during the hearing.

The Tenant stated that she did not submit any evidence in response to the Landlord's claims, although on February 25, 2015 she did file an Application for Dispute Resolution which is scheduled to be heard on March 25, 2015. She stated that she applied for an Order requiring the Landlord to make repairs to the rental unit; for an Order suspending or setting conditions on the Landlord's right to enter the rental unit; for a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act); and for authority to reduce the rent. As the issues in dispute in the Tenant's Application for Dispute Resolution are not directly related to the issues in dispute at these proceedings, I determined it was reasonable to consider the matters separately.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

At the outset of the hearing the Tenant declared that the Landlord has not used her legal name in the Application for Dispute Resolution. The Landlord declined the opportunity to amend the Application for Dispute Resolution to reflect the name the Tenant provided at the hearing and the Application has, therefore, not been amended.

Issue(s) to be Decided

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

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on April 28, 2012, for which the Tenant agreed to pay rent of \$1,100.00 by the first day of each month.

The Landlord submitted a copy of a tenancy agreement. The agreement identifies the both the Applicant and a person with the same name as the Respondent as the "landlord". It identifies a male as the "tenant". The Tenant stated that this male intended to move into the rental unit but never did.

The first name of the Respondent appears on the signatory page of the tenancy agreement. The Tenant stated that this is her signature.

The Landlord and the Tenant agree that the Tenant paid \$150.00 in rent on September 14, 2014; \$400.00 in rent on October 01, 2014; and \$1,200.00 in rent on November 20, 2014. The parties agree that all of these payments were paid in cash, for which the Tenant was given a receipt.

The Landlord and the Tenant agree that the Tenant paid \$1,300.00 in rent on December 01, 2014; \$400.00 in rent on December 02, 2014; \$400.00 in rent on January 12, 2015; \$500.00 in rent on January 30, 2015. The parties agree that these payments were

made by electronic transfer. The parties agree no rent was paid in February or March of 2015.

The Tenant stated that she also paid \$550.00 in rent on an unknown date in September and \$650.00 in rent on October 14, 2014. The Landlord stated that the Tenant did not pay these amounts. The Tenant submitted no receipts to show these amounts were paid.

The Landlord stated that on November 11, 2014 he posted a Ten Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit. The Tenant stated that her 12 year old child gave her the Notice to End Tenancy on November 12, 2014.

The Ten Day Notice to End Tenancy, which was submitted in evidence, declares that the Tenant must vacate the rental unit by November 17, 2014 and that the Tenant has failed to pay rent of \$2,750.00 that was due on November 01, 2014. The Tenant stated that she did not have the Notice to End Tenancy with her at the time of the hearing, but she thinks that information is accurate.

The Ten Day Notice to End Tenancy declared that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental unit by the date set out in the Notice unless the Tenant pays the outstanding rent or files an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice.

Analysis

On the basis of the undisputed evidence, I find that the Landlord (Applicant) entered into a tenancy agreement with the Tenant (Respondent), in which the Tenant agreed to pay rent of \$1,100.00 by the first day of each month.

On the basis of the undisputed evidence, I find that the Tenant paid \$150.00 in rent on September 14, 2014; \$400.00 in rent on October 01, 2014; and \$1,200.00 in rent on November 20, 2014, for a total of \$1,750.00. As the Tenant was obligated to pay rent of \$3,300.00 for these three months, I find that she still owes \$1,550.00 in rent for these months.

In determining this matter I find that the Tenant submitted insufficient evidence to show that she paid \$550.00 in rent, in cash, on an unknown date in September or that she paid \$650.00 in rent, in cash, on October 14, 2014. In reaching this conclusion I was heavily influenced by the absence of evidence, such as receipts, which corroborates the Tenant's testimony that the amounts were paid or that refutes the Landlord's testimony that the amounts were not paid.

I note that I have not determined whether rent is due for any period after November 30, 2014, as the Landlord has not claimed compensation for unpaid rent for any period after that date.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy by providing proper notice to the tenant. On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that on November 12, 2014 the Tenant received the Ten Day Notice to End Tenancy that is the subject of this dispute. I find that this Notice has been sufficiently served, pursuant to section 71(2)(b) of the *Act*.

Section 46(4) of the *Act* stipulates that a tenant has five days from the date of receiving the Notice to End Tenancy to either pay all of the outstanding rent or to file an Application for Dispute Resolution to dispute 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 is presumed to have accepted that the tenancy ended on the effective date of the Notice, which was November 17, 2014. I therefore find that the Landlord is entitled to an Order of Possession.

Conclusion

The Landlord has been granted 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 \$1,550.00, in unpaid rent and I grant the Landlord a monetary Order for that amount. In the event 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: March 03, 2015

Residential Tenancy Branch

