



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, 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, and to recover the fee for filing this Application for Dispute Resolution.

On the basis of the details of dispute section on the Application for Dispute Resolution, I find it is readily apparent that the Landlord is also seeking compensation for a late payment fee of \$20.00, and I find it appropriate to consider that claim at these proceedings.

The Agent for the Landlord stated that on April 24, 2015 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord wishes to rely upon as evidence were sent to each Tenant. She stated that the package addressed to the male Tenant was returned by Canada Post.

The Tenant stated that he did not receive a package from the Landlord; that the other Tenant, who is his wife, received the aforementioned documents; and that he viewed the documents received by his wife. He stated that he is representing the other Tenant at these proceedings.

On the basis of the undisputed evidence, I find that the male Tenant was served with the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord wishes to rely upon as evidence in accordance with section 71(2)(b) of the *Residential Tenancy Act (Act)*.

On the basis of the undisputed evidence, I find that the female Tenant was served with the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord wishes to rely upon as evidence in accordance with section 89(1)(c) of the *Act*.

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.

Issue(s) to be Decided

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

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on July 01, 2012;
- the monthly rent is \$1,185.00;
- rent is due by the first day of each month;
- rent for April of 2015 was not paid, in full, when it was due on April 01, 2015;
- the Tenant paid \$450.00 in rent on April 28, 2015, at which time rent was paid in full;
- the Tenant paid rent, in full, on May 01, 2015 and was provided with a receipt for use and occupancy only;
- rent has not been paid for June of 2015.

The Agent for the Landlord stated that the Landlord would be willing to allow the Tenant to remain in the rental unit until the end of June, provided rent for June is paid in full. The Tenant stated that the Tenant intends to vacate the rental unit by June 14, 2015.

The Landlord and the Tenant agree that a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of April 13, 2015, was personally served to the Tenant on April 02, 2015.

The Landlord is seeking compensation, in the amount of \$20.00, because rent has not yet been paid for June of 2015. The Landlord submitted a copy of the tenancy agreement which stipulates a "minimum service charge of \$20.00" will be charges for "arrears, late payments, returned and non-sufficient fund cheques".

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord and that required the Tenant to pay monthly rent of \$1,185.00 by the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord when it is due.

Section 46(1) of the *Act* entitles landlords to end the tenancy within ten days, by providing proper written notice, if rent is not paid when it is due. On the basis of the undisputed evidence, I find that the Tenant did not pay rent, in full, for April of 2015 until April 28, 2015. I therefore find that the Landlord had the right to serve the Tenant with notice to end the tenancy in accordance with section 46(1) of the *Act*. 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 served to the Tenant on April 02, 2015.

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. 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 April 13, 2015. On this basis I grant the landlord an Order of Possession.

As the Tenant did not vacate the rental unit on the effective date of the Notice to End Tenancy, 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 paid rent for the period between April 13, 2015 and May 31, 2015, I find that the Landlord has been fully compensated for that period.

I find that the Tenant must compensate the Landlord for fourteen days in June that the Tenant intends to occupy the rental unit, at a daily rate of \$39.50, which equates to \$553.00. I decline to award further compensation for the month of June, as there is no reason for me to conclude that the Tenant will not vacate the rental unit by June 14, 2014 and the Landlord has not applied for compensation for lost revenue.

Section 7 of the *Residential Tenancy Regulation* authorizes a landlord to collect a late fee if rent is not paid when it is due. As this tenancy ended on April 13, 2015, pursuant to a Ten Day Notice to End Tenancy, rent was not due after that date. Although a tenant remains obligated to pay rent if they continue to occupy the rental unit, as is the case in these circumstances, the per diem rent is not due on any particular date. I therefore find that the Tenant was not obligated to pay rent on June 01, 2015 and I dismiss the Landlord's claim for a late fee as a result of the rent not being paid on that date.

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

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on June 14, 2015. 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 \$603.00, which is comprised of \$553.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$603.00. 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: June 08, 2015

Residential Tenancy Branch

