



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Eviction Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, 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, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on October 30, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord submitted to the Residential Tenancy Branch on November 24, 2015 were sent to each Tenant, via registered mail, at the rental unit. The Agent for the Landlord cited two 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 the male Tenant did not appear at the hearing. As the documents have been served in accordance with section 89 of the *Act*, the hearing proceeded in the absence of the male Tenant.

The Agent for the Landlord stated that after the aforementioned documents were mailed she was informed by the female Tenant that she had not received the documents. The Agent for the Landlord stated that on November 30, 2015 she posted a copy of these documents on the door of the rental unit. The Tenant stated that she received these documents on December 13, 2015.

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

Issue(s) to be Decided

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

Background and Evidence

The Agent for the Landlord and the Tenant agree that:

- this tenancy began sometime prior to the property being sold to the current Landlord;
- the Tenants signed a tenancy agreement with the former Landlord;
- the Tenants agreed to pay monthly rent of \$2,300.00 by the first day of each month;
- the Tenants paid a security deposit of \$1,150.00; and
- rent has not been paid for any period after August 31, 2015.

The Agent for the Landlord stated that the Tenant was advised, via email, that rent was to be paid to the new Landlord. The Tenant stated that her former Landlord informed her that the rental unit had been sold but she did not receive an email informing her to pay rent to the new Landlord.

The Landlord submitted a series of emails between the Tenant and an agent for the Landlord from August of 2015. In these emails the parties agree that rent will be paid by e-transfer.

The Agent for the Landlord stated that on October 15, 2015 she posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of October 25, 2015, on the door of the rental unit.

The Tenant stated that she has a copy of the Ten Day Notice to End Tenancy for Unpaid Rent but she does not recall how/when she received the Notice. She stated that her father has given her documents that were posted on the door and it is entirely possible that he gave her a copy of this Notice, although she is not certain.

The Tenant stated that she has memory impairment.

The Agent for the Landlord stated that she had a telephone conversation with the Tenant on October 19, 2015, in which the Tenant informed her she had received the Ten Day Notice to End Tenancy; that she intended to dispute the Notice; and that the locks to the rental unit had been changed. The Tenant stated that she does not recall this conversation but she trusts the Agent for the Landlord's testimony regarding the conversation.

The Agent for the Landlord stated that the Landlord denies changing the locks to the rental unit and the Landlord denies offering free rent to the Tenant.

The Tenant initially stated that she vacated the rental unit on September 15, 2015; that some of her personal property is still in the rental unit; and that she cannot remove her personal property because the locks to the unit have been changed and she cannot access the rental unit.

The Tenant subsequently stated that she has not been able to access the rental unit with her key since September 01, 2015, although other people living in the residential complex provided her with access to the complex until September 15, 2015. She stated that the people providing her with access to the complex had vacated the complex by September 15, 2015 and that she was no longer able to access the complex after that date.

The Tenant subsequently stated that she does not have any personal property in the rental unit. She stated that when she previously testified about her personal property she intended to state that some of her personal property was in storage at the residential complex and on the main floor of the residential complex, neither of which is a part of the rental unit that is the subject of this dispute.

The Tenant stated that sometime near the beginning of September she received an email from a person named "Linda", whom she believes is the Landlord, in which Linda apologized for changing the locks and asked her to speak with a person named "Richard".

The Tenant stated that she spoke with "Richard" who stated that she would be allowed to occupy the main floor of the rental unit as part of her employment contract; that her rental unit had been "given away"; and that the Landlord would give her keys. She stated that this agreement was not fulfilled as they could not reach an agreement in regards to this new arrangement.

The Tenant stated that she left the keys to the rental unit in the rental unit on September 15, 2015 and that she informed the Landlord of the location of the keys, via email.

The Agent for the Landlord stated that she did not receive an email from the Tenant informing her that the keys had been left in the rental unit.

The Agent for the Landlord stated that she has exchanged 18 emails with the Tenant since she became an agent for the Landlord in October of 2015. She stated that in one of the emails the Tenant informed her that the new owner told her she did not have to pay rent for a period of time, which the Landlord denies.

The Agent for the Landlord stated that she believes the Tenant has continued to access the rental unit after September 01, 2015 as she has picked up documents posted to the door on October 15, 2015 and November 30, 2015. The Tenant stated that she her father retrieved documents that had been posted to her door and that he checked the door after the Agent for the Landlord informed her documents had been posted.

The Agent for the Landlord stated that in the 18 emails she exchanged with the Tenant the Tenant did not inform her that she was unable to access the rental unit or that she had moved out of the rental unit.

The Agent for the Landlord stated that when she last went to the rental unit on November 30, 2015 she observed furnishings and dishes in the kitchen of the rental unit.

The Tenant stated that the rental unit was a furnished unit and that the property observed by the Agent for the Landlord belonged to the Landlord.

The Agent for the Landlord referred to the tenancy agreement and noted that some furniture was provided with the tenancy, at which point she acknowledged that the property she observed on November 30, 2015 could belong to the Landlord.

The Agent for the Landlord stated that on November 05, 2015 she received an email from another agent for the Landlord, informing her that the Tenant had denied the agent entry to the rental unit on November 04, 2015. The Tenant stated that this did not happen as she was not residing in the rental unit in November of 2015.

The emails exchanged between the Tenant and the Agent for the Landlord were not submitted as evidence.

The Landlord submitted an email from the Tenant, dated August 21, 2015, in which the Tenant stated that the "locks to the Main entrance lobby" were changed and that she does not have a key to this area of the house. The Landlord submitted a second email from the Tenant, also dated August 21, 2015, in which the Tenant stated that she was "re-informed" that the key was copied and no locks were changed.

Analysis

On the basis of the undisputed evidence, I find that the Tenants entered into a tenancy agreement in which they agreed to pay \$2,300.00 in rent by the first day of each month. As the tenancy was not ended by either party when the property was sold to the new owner, the Tenants remained obligated to pay the rent to the new owner.

Section 26 of the *Act* requires tenants to pay rent when it is due for the duration of the tenancy. As there is no evidence to show that either party ended the tenancy prior to October 01, 2015, I find that the Tenants remained obligated to pay the rent that was due on September 01, 2015 and October 01, 2015. The undisputed evidence is that no rent was paid for September and October of 2015 and I therefore find that the Tenants owe \$4,600.00 in rent for these months.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days, by providing proper written notice, if rent is not paid when it is due. On the basis of the testimony of the Agent for the Landlord and in the absence of evidence to the contrary, I find that a

Ten Day Notice to End Tenancy for Unpaid Rent was posted on the door of the rental unit on October 15, 2015.

Although the Tenant does not recall how/when she received the Ten Day Notice to End Tenancy for Unpaid Rent, she acknowledges receiving it. 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 Tenants are deemed to have received the Notice to End Tenancy on October 18, 2015.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenants are deemed to have received this Notice on October 18, 2015, I find that the earliest effective date of the Notice was October 28, 2015.

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 Ten Day Notice to End Tenancy was October 28, 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. 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 has ended. I therefore find that the Landlord is entitled to the Order of Possession requested.

In adjudicating this matter I find there is insufficient evidence to support the Tenant's submission that the Landlord changed the lock to the rental unit. Although the Tenant did inform the Agent for the Landlord that the lock to the unit had been changed during their conversation on October 19, 2015, the Landlord denies the allegation. I note that the Tenant has submitted no evidence to corroborate her testimony that the locks to the rental unit were changed or to refute the Landlord's submission that the locks were not changed.

I find the Tenant's testimony in regards to the lock being changed on, or before, September 01, 2015 lacks credibility, in part, because the Tenant stated that she left the keys to the rental unit in the rental unit on September 15, 2015. This would not have been possible if she had been unable to access the unit after September 01, 2015.

I find the Tenant's testimony in regards to the lock being changed on, or before, September 01, 2015 lacks credibility, in part, because she contends that all of her personal property has been removed from the rental unit. This seems unlikely if she did not have access to the rental unit after September 01, 2015, given that the tenancy had not ended and there would be no need to remove her property.

I find the Tenant's testimony in regards to the lock being changed on, or before, September 01, 2015 lacks credibility, in part, because the Landlord applied for an Order of Possession on October 27, 2015. I find it unlikely that the Landlord would be seeking an Order of Possession if the Landlord believed the Tenants did not still have access to the unit.

As the Tenants failed to establish that the locks to the rental unit had been changed, I find that the Tenants' obligation to pay rent when it was due was not negated.

I find that the Landlord has failed to establish that the Tenants did not vacate the rental unit by October 28, 2015, which was the effective date of the Notice to End Tenancy.

In determining that the Landlord failed to establish that the Tenants did not vacate the rental unit by October 28, 2015 I was influenced, in part, by the absence of documentary evidence that refutes the Tenant's testimony that she vacated the rental unit in September of 2015. I note that the Landlord did not submit any of the 18 emails the Agent for the Landlord exchanged with the Tenants, which may have helped to establish whether the Tenants continued to occupy the rental unit after October 28, 2015.

In determining that the Landlord failed to establish that the Tenants did not vacate the rental unit by October 28, 2015, I placed little weight on the Agent for the Landlord's speculation that the Tenant must have been residing in the rental unit because she received documents posted on the door of the unit on October 15, 2015 and November 30, 2015. I find that Tenant provided a reasonable explanation for this, which was that she asked her father to check the door after the Agent for the Landlord informed her that documents had been posted.

In determining that the Landlord failed to establish that the Tenants did not vacate the rental unit by October 28, 2015, I placed little weight on the Agent for the Landlord's testimony that she observed furniture in the rental unit when she was there on November 30, 2015. I find that Tenant provided a reasonable explanation for this, which was that the rental unit was partially furnished and the items the Agent for the Landlord observed belonged to the Landlord.

In determining that the Landlord failed to establish that the Tenants did not vacate the rental unit by October 28, 2015, I find that the Agent for the Landlord testimony that she received an email from another agent for the Landlord informing her that the Tenant had denied the agent entry to the rental unit on November 04, 2015 is of limited evidentiary value. Given that the person generating that email did not testify; the Tenant denies the assertion made by the author of the email; and a copy of the email was not submitted in evidence, I have insufficient evidence to conclude that this event occurred.

As the Landlord has failed to establish that the Tenants did not vacate the rental unit by October 28, 2015, I dismiss the Landlord's claim for lost revenue for November of 2015, December of 2015, and January of 2016.

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 two days after it is served upon the Tenants. 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 \$4,650.00, which is comprised of \$4,600.00 in unpaid rent 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 keep the Tenants' security deposit of \$1,150.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$3,500.00. 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 *Residential Tenancy Act*.

Dated: December 31, 2015

Residential Tenancy Branch

