



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax Little Oak Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an order of possession for unpaid rent, a monetary order for unpaid rent, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on September 22, 2017 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent to the tenant via registered mail to the address noted on the application. A Canada Post tracking number and receipt was provided as evidence of service.

Therefore, I find that these documents are deemed to have been served on the fifth day after mailing, in accordance with section 89 and 90 of the Act.

The tenant did not appear at the hearing.

Preliminary Matters

The tenant vacated the rental unit on October 7, 2017; an order of possession is not required.

The landlord requested compensation for loss of rent revenue from the end of the tenancy to the time possession was obtained.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

May the landlord retain the security deposit paid by the tenant?

Background and Evidence

The tenancy commenced on May 5, 2017 as a six month fixed term ending October 31, 2017. Rent was \$2,400.00 per month, due on the first day of each month. A security deposit in the sum of \$1,200.00 was paid. A copy of the tenancy agreement was supplied as evidence.

The landlord stated that on September 8, 2017 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of September 18, 2017 was served by posting to the door on September 11, 2017.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$3,725.00 within five days after the tenant was assumed to have received the Notice. The sum on the Notice included an unpaid pet deposit. The tenant had not paid September 2017 rent in the sum of \$2,400.00.

There was no evidence that the tenant disputed the Notice ending tenancy. The tenant vacated the rental unit on October 7, 2017.

The landlord has claimed unpaid September rent in the sum of \$2,400.00, to retain the security deposit and the loss of October 2017 rent revenue.

Analysis

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. Therefore, I find that the tenant is deemed to have received the Notice to end tenancy on September 11, 2017.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on September 11, 2017, I find that the earliest effective date of the Notice is September 21, 2017.

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 September 21, 2017.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on September 21, 2017, pursuant to section 46 of the Act.

In the absence of evidence to the contrary, I find that the tenant failed to vacate the rental unit on the effective date of the Notice and that the tenant over held in the unit to October 7, 2017.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure provides:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

As the tenant would know that payment is required to occupy a rental unit, I find it could be reasonably anticipated that the application would be amended to include a claim for each day the tenant over held in the rental unit beyond the effective date of the Notice. Therefore, I find that the application is amended to include per diem rent from September 22 to October 7, 2017, inclusive.

There was no evidence before me that the tenant disputed the Notice or paid rent owed for September 2017 and per diem rent for over-holding. The tenant did not attend the hearing to oppose the claim, as served.

Therefore, I find that the landlord is entitled to compensation in the sum of \$2,952.30 (\$2,400.00 for September and \$78.90 per diem from October 1 to October 7, 2017, inclusive.)

As the landlords' claim has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the \$1,200.00 security deposit in partial satisfaction of the claim.

Based on these determinations I grant the landlord a monetary order for the balance of **\$1,852.30**. 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.

Conclusion

The landlord is entitled to a monetary order for unpaid rent and per diem rent.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy*

Dated: November 16, 2017

Residential Tenancy Branch