



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 has made application 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; to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the outset of the hearing the Agent for the Landlord withdrew the application monetary Order for unpaid rent and a monetary Order for money owed or compensation for damage or loss, as no money is currently owed to the Landlord.

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

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; whether the Landlord has the right to retain any portion of the security deposit; and whether the Landlord is entitled to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55 and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on June 01, 2007; that the Tenant is required to pay subsidized monthly rent by the first day of each month; that the rent for April of 2012 was \$284.00 and that the rent for May of 2012.

The Landlord and the Tenant agree that the Tenant had not paid all the rent that was due for April by April 01, 2012 and that on April 26, 2012 the Tenant paid all the rent he

owed for April and May of 2012, at which time he was given a receipt that indicated the rent was being accepted for "use and occupancy only".

The Caretaker stated that he posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of April 21, 2012, on the door of the rental unit on April 11, 2012.

The Tenants stated that in the past few months he has been paying his rent in cash and that he has had difficulty withdrawing money from his bank in time to pay his rent on the date that it is due. The Tenant stated that he has now arranged his personal finances in a manner that will enable him to pay rent when it is due. The Agent for the Landlord stated that the Landlord is not interested in continuing this tenancy in spite of the Tenant's assurances he will pay his rent on time.

Analysis

Based on the undisputed evidence presented at the hearing, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay subsidized rent by the first day of each month and that the rent for April of 2012 was \$284.00 and for May of 2012 the rent was \$366.00.

Based on the undisputed evidence presented at the hearing, I find that the Tenant did the rent that was due on April 01, 2012 until April 26, 2012.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. Based on the undisputed evidence presented at the hearing, I find that the a Notice to End Tenancy that directed the Tenant to vacate the rental unit by April 21, 2012, pursuant to section 46 of the *Act*, was posted on April 11, 2012.

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 Tenant received the Notice to End Tenancy on April 14, 2012.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on April 14, 2012, I find that the earliest effective date of the Notice was April 24, 2012.

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 April 24, 2012.

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 has ended. On this basis I find that the Landlord is entitled to an Order of Possession.

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 at 1:00 p.m. on May 31, 2012. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$50.00, in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain this amount from the Tenant's security deposit.

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: May 16, 2012.

Residential Tenancy Branch