



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, 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, 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.

The male Landlord stated that three copies of the Application for Dispute Resolution and Notice of Hearing were personally served to the Tenant with the initials "E.L.", who he believes is an adult. In the absence of evidence to the contrary, I find that these documents have been served to the Tenant with the initials "E.L." in accordance with section 89(2)(a) of the *Residential Tenancy Act (Act)* and to the other two Tenants in accordance with section 89(2)(c) of the *Act*, however none of the Tenant's appeared at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent; to keep all or part of the security deposit; and 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 male Landlord stated that this tenancy began on June 30, 2009; that the tenancy agreement requires the Tenant to pay monthly rent of \$1,150.00 by the first day of each month; that the Tenant paid a security deposit of \$550.00 on June 01, 2009; and that the rent for the rental unit is currently in arrears by \$5,100.00. The male Landlord stated that the Landlord is not seeking a monetary Order at this time, but that they do want authority to retain the security deposit in partial satisfaction of the outstanding rent.

The male Landlord stated that he personally served the Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of January 20, 2013, to the male Tenant, who he believes is an adult, on January 11, 2013.

Analysis

Based on the undisputed evidence I find that the Tenants are required to pay monthly rent of \$1,150.00 by the first day of each month and that the rent is currently in arrears by \$5,100.00. I therefore authorize the Landlord to retain the security deposit of \$550.00, in partial satisfaction of those arrears.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. On the basis of the undisputed evidence, I find that the male Tenant was served with a Ten Day Notice to End Tenancy in accordance with section 88(a) of the *Act* and the other two Tenants were served with the Notice to End Tenancy in accordance with section 88(e) of the *Act*.

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 ended on the effective date of the Notice to End Tenancy. On this basis I find that the Landlord is entitled to an Order of Possession.

Conclusion

I hereby grant the Landlord 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.

I find that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution and I grant the Landlord a monetary Order for the amount of \$50.00. 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: February 14, 2013

Residential Tenancy Branch