



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0825778 dba Hynes Developments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, OPC, MNR, MNDC, FF / CNC, FF

Introduction

This hearing was scheduled in response to 2 applications: i) by the landlord for an order of possession for unpaid rent / an order of possession for cause / a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee; and ii) by the tenant for cancellation of a notice to end tenancy for cause / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

A second hearing has been scheduled in response to the tenant's application for cancellation of a 10 day notice to end tenancy for unpaid rent / and recovery of the filing fee for that application. That hearing was to commence at 1:30 p.m. on Friday, April 5, 2013. However, the parties agreed to having all matters in dispute heard during this present hearing, with the result that the hearing scheduled for April 5, 2013 is hereby cancelled.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from February 1, 2012 to January 31, 2013. Thereafter, the agreement provides that tenancy may continue on a month-to-month basis. Monthly rent of \$1,600.00 is due and payable in advance on the first day of each month, and a security deposit of \$800.00 was collected.

The landlord issued a 1 month notice to end tenancy for cause dated February 28, 2013. The notice was served in-person on that same date. A copy of the notice was

submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is March 31, 2013, and reasons shown on the notice in support of its issuance are numerous. The tenant filed an application to dispute the notice on March 5, 2013.

Subsequently, arising from rent in the amount of \$1,600.00 which was unpaid when due on March 1, 2013, the landlord issued a 10 day notice to end tenancy for unpaid rent dated March 8, 2013. The tenant filed an application to dispute the notice on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is March 19, 2013. The tenant does not dispute that rent has still not been paid for March. While the tenant himself does not reside in the unit, it presently remains occupied by persons to whom the tenant has sublet.

The landlord stated that for the purposes of this present hearing, an order of possession is being sought on the basis of the 10 day notice to end tenancy for unpaid rent, and not the 1 month notice to end tenancy for cause.

As to payment of rent for April 2013, the parties were presently unable to confirm whether there are sufficient funds to cover the post-dated cheque for April's rent.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and the affirmed testimony of the parties, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated March 8, 2013. While the tenant filed an application to dispute the notice within 5 days of receiving it, no portion of the outstanding rent has yet been paid. The tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlord has established entitlement to an **order of possession**.

As for the **monetary order**, I find that the landlord has established a claim of **\$1,650.00**, which is comprised of \$1,600.00 in unpaid rent for March 2013, in addition to the \$50.00 filing fee.

The landlord has not applied to retain the security deposit. As the end of tenancy nears, the attention of the parties is drawn to section 38 of the Act which speaks to **Return of security deposit and pet damage deposit**.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,650.00**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

The hearing scheduled to commence at 1:30 p.m. on Friday, April 5, 2013 (file # 805643) is hereby cancelled.

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: April 2, 2013

Residential Tenancy Branch

