



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Estates Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MND, 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 damage to the rental unit, 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.

The Agent for the Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord intends to reply upon as evidence were sent to the Tenant at the rental unit, via registered mail, on February 26, 2013. The Agent for the Landlord cited a Canada Post tracking number that corroborates this statement. The Agent for the Landlord stated that the mail was not claimed by the Tenant and was returned to the Landlord. 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 Tenant did not appear at the hearing.

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession for unpaid rent; to compensation for unpaid rent, loss of revenue, and/or late fees; to keep all or part of the security deposit; and to recover the fee for filing the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*?

Background and Evidence

The Agent for the Landlord stated that this tenancy began on December 01, 2009; that the monthly rent during the latter part of the tenancy was \$990.00, due by the first day of each month; that the Tenant paid a security deposit of \$485.00 on November 23, 2009; and that the Tenant has not paid rent for February or March of 2013.

The Agent for the Landlord stated that she posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of February 18, 2013, on the door of the rental unit on February 08, 2013. The Landlord submitted a Proof of Service, which is signed by an individual who witnessed the posting of the Notice.

The Landlord is also seeking to collect late fees for February and March of 2013. The tenancy agreement stipulates that a late fee of \$25.00 is due if the rent is paid after the fifth day of the month.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$990.00 during the latter portion of the tenancy; that the rent was due by the first day of each month; and that no rent has been paid for February or March of 2013. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act* when it is due, I find that the Tenant must pay \$990.00 in unpaid rent for February of 2013.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. In the absence of evidence to the contrary, I find that a Ten Day Notice to End Tenancy was posted at the rental unit on February 08, 2013, which declared the Tenant must vacate the rental unit by February 18, 2013.

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 February 11, 2013.

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 February 11, 2013, I find that the earliest effective date of the Notice was February 21, 2013.

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 February 21, 2013.

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.

As the Tenant did not vacate the rental unit on February 21, 2013, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay rent for the period between February 21, 2013 and February 28, 2013, I find that the Landlord has been fully compensated for that period. I also find that the Tenant must compensate the Landlord for the 20 days in March that the Tenant remained in possession of the rental unit, at a daily rate of \$31.94, which equates to \$638.80.

I find that the Tenant fundamentally breached the tenancy agreement when the Tenant did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when the Tenant did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that his continued occupancy of the rental unit made it difficult, if not impossible, for the Landlord to find new tenants for the remainder of March. I therefore find that the Tenant must compensate the Landlord for the loss of revenue the Landlord experienced, or is likely to experience, between March 21, 2013 and March 31, 2013, which was \$351.20.

As the Tenant did not pay the rent by February 05, 2013, I find that the Tenant is obligated to pay a late fee of \$25.00 for February 2013, as per the terms of the tenancy agreement. As the tenancy had ended, pursuant to section 46 of the *Act*, by March 01, 2013, I find that the Tenant was no longer obligated to pay rent by the first day of that month. I therefore find that the Tenant is not obligated to pay a late fee for the month of March.

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 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 has established a monetary claim, in the amount of \$2,055.00, which is comprised of \$1,980.00 in unpaid rent, a \$25.00 late fee, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord will be retaining the Tenant's security deposit, in the amount of \$485.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,570.00. 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: March 20, 2013

Residential Tenancy Branch

