



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CELERITY CAPITOL CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep all or part of the security and or pet deposit; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord submitted documentary evidence which indicates the Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on March 21, 2013, by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find the Tenant is deemed served notice of this proceeding on March 26, 2013, five days after it was mailed, in accordance with section 90 of the Act; therefore I proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the 10 Day Notice to end tenancy for unpaid rent issued March 5, 2013; proof of service document; the tenancy agreement; and a tenant ledger.

The Landlord stated that the parties entered into a written month to month tenancy agreement that began on December 1, 2011. Rent is payable on the first of each month in the amount of \$750.00 and \$375.00 was paid on December 1, 2011, as the security deposit. When the Tenant failed to pay the accumulated unpaid rent that was due on March 1, 2013, a 10 Day Notice was posted to the Tenant's door on March 5, 2013.

The Tenant attended the Landlord's office the next day and signed the proof of service document acknowledging receipt of the Notice.

The Landlord advised that the Tenant has since vacated the property leaving his adult son residing in the unit. The Tenant's son has never paid rent so the Landlord is wishing to regain possession of the unit as soon as possible and to recover the unpaid rent of \$1,125.00 which is comprised of \$375.00 owing for February 2013 plus \$750.00 owing for March 2013.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant acknowledged receipt of the 10 Day Notice on March 6, 2013; therefore the effective date of the Notice is **March 16, 2013**, in accordance with the Act. The Tenant did not pay the rent and did not dispute the Notice, therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent of \$1,125.00 which was due February 1, 2013 and March 1, 2013, (\$375.00 + \$750.00). The Tenant failed to pay rent in accordance with the tenancy agreement which is a breach of section 26 of the Act. Accordingly, I award the Landlord a Monetary Award for unpaid rent of **\$1,125.00**.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid Rent up to March 1, 2013	\$1,125.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,175.00
LESS: Security Deposit \$375.00 + Interest 0.00	<u>-375.00</u>
Offset amount due to the Landlord	<u>\$ 800.00</u>

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$800.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be 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: April 17, 2013

Residential Tenancy Branch

