



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding L-259 Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "*Act*"), seeking an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee.

The landlord appeared by conference call and gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and make submissions during the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The landlord testified that the Notice of Hearing and evidence package was served via registered mail to the tenant at the rental unit on April 19, 2013. A registered mail receipt tracking number was provided during the hearing. The landlord stated that as of Wednesday, May 8, 2013 there was still activity at the rental unit and that the landlord has no information that leads him to believe that the tenant has vacated the rental unit. Based on the undisputed testimony of the landlord, I find the tenant was sufficiently served with the Notice of Hearing and evidence in accordance with the *Act* and Rules of Procedure.

Preliminary Matter

The landlord stated that the tenant continues to occupy the rental unit and has also failed to pay rent for May 2013 in the amount of \$1,150.00 which was due May 1, 2013. As a result, the landlord requested to include unpaid rent for May 2013 in his monetary claim during the hearing. As this request to amend the application does not prejudice the respondent tenant as the tenant would be aware that rent is due pursuant to the tenancy agreement, and no notice to end the tenancy was given by the tenant, I grant the landlord's request to amend the application to \$2,300.00. This amount includes

unpaid rent for April 2013 in the amount of \$1,150.00 and May 2013 in the amount of \$1,150.00. The landlord is also seeking the recovery of his filing fee.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent under the *Act*?
- Is the landlord entitled to a monetary order for unpaid rent under the *Act*, and if so, in what amount?

Background and Evidence

The landlord provided a copy of the signed tenancy agreement in evidence. A fixed term tenancy began on June 1, 2011 and reverted to a month to month tenancy as of June 1, 2012. Monthly rent in the amount of \$1,150.00 is due on the first day of each month. A security deposit of \$575.00 was paid at the start of the tenancy, which the landlord continues to hold.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated April 2, 2013 was served personally on the tenant at the rental unit on April 2, 2013 at approximately noon. The 10 Day Notice has an effective vacancy date of April 12, 2013. The 10 Day Notice states that the tenant had five days to pay the rent in full or apply for dispute resolution or the tenancy would end 10 days from the service date. The tenant did not apply to dispute the 10 Day Notice or pay the full rent in full within five days from the date of service.

The landlord testified that rent for May 2013 has also not been paid resulting in the tenant owing \$1,150.00 in unpaid rent for April 2013, and \$1,150.00 for unpaid rent for May 2013. The landlord stated that the tenant continues to occupy the rental unit and is seeking an order of possession and a monetary order as a result.

The landlord provided a copy of the 10 Day Notice and the tenancy agreement in evidence.

Analysis

Based on the documentary evidence and the undisputed testimony of the landlord and on the balance of probabilities, I find the following.

Order of Possession - I find that the tenant failed to pay the full rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective

vacancy date of the notice, which was April 12, 2013. **I grant** the landlord an order of possession effective **two days** after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

Claim for unpaid rent - The landlord is seeking unpaid rent for April 2013 in the amount of \$1,150.00 and unpaid rent for May 2013 in the amount of \$1,150.00 for a total of \$2,300.00 in unpaid rent. Pursuant to section 26 of the *Act* the tenant must pay rent when it is due in accordance with the tenancy agreement. The tenant continues to occupy the rental unit.

Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. **I find** the landlord has met the burden of proof and I award them a monetary claim of \$2,300.00 for rent owed for the months of April and May 2013.

As the landlord has succeeded with their application, **I grant** the landlord the recovery of the **\$50.00** filing fee. The tenant's security deposit of \$575.00 has accrued no interest since the start of the tenancy, which the landlord continues to hold.

I find that the landlord has established a total monetary claim of **\$2,350.00** consisting of \$2,300.00 in unpaid rent and the \$50.00 filing fee. **I authorize** the landlord to retain the full security deposit of \$575.00 in partial satisfaction of the claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing in the amount of **\$1,775.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I grant the landlord an order of possession effective two days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

I find that the landlord has established a total monetary claim of \$2,350.00 consisting of \$2,300.00 in unpaid rent and the \$50.00 filing fee. I authorize the landlord to retain the full security deposit of \$575.00 in partial satisfaction of the claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing in the amount of \$1,775.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 10, 2013

Residential Tenancy Branch