



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding British Columbia Housing Management Commission
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The landlord's agent testifies that this month to month tenancy started on August 15, 2011. Rent for this unit is \$472.00 per month and is due on the 1st of each month.

The landlord's agent testifies that the tenant failed to pay rent due for April, 2013 of \$472.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on April 10,

2013. This was posted to the tenant's door on April 11, 2013 and was deemed to have been served three days after posting. This Notice states that the tenant owes rent of \$475.00 which was due on April 01, 2013. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on April 20 2013. The tenant did not pay the outstanding rent or dispute the Notice within five days. The landlord's agent testifies that the tenant did however pay the outstanding rent and rent for May, 2013 on May 02, 2013. This rent was accepted for use and occupancy only and the tenant was notified of this on the rent receipt.

The landlord's agent requests an Order of Possession to take effect on June 15, 2013 and withdraws there application for a Monetary Order as there are no longer rent arrears. The landlord's agent also withdraws their application to recover the filing fee from the tenant.

The tenant testifies that her rent money for April was stolen when the tenant experienced a home invasion. A police report was filed concerning this. The tenant testifies that as soon as she received the 10 Day Notice she took this to Welfare. The tenant testifies that she had a meeting with the landlord's agent on either April 18 or 19, 2013 and the landlord's agent told the tenant that the tenant would still have to leave. The tenant testifies that the landlord's agent suggests the tenant gave written notice to end the tenancy which the tenant did. The tenant testifies she then spoke to another agent for the landlord who informed the tenant to pay her rent and withdraw her notice to end the tenancy. The tenant testifies that she did then pay the rent on May 01, 2013 and wrote to the landlord to ask to be transferred to another unit and to have her rent lowered.

Analysis

Section 26 of the *Residential Tenancy Act (Act)* states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had **five days** to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **on June 15, 2013**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

The landlord's application for Monetary Orders has been withdrawn.

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: May 29, 2013

Residential Tenancy Branch

