



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, FF

Introduction

This hearing dealt with the landlord's amended application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:45 p.m. in order to enable him to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord's resident manager testified that she handed the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on March 11, 2013. The landlord entered into written evidence a copy of a Proof of Service document in which the tenant gave his written confirmation that he was handed the 10 Day Notice on March 11, 2013. The landlord's agent (the agent) testified that her company sent the tenant a copy of the landlord's amended dispute resolution hearing package by registered mail on April 5, 2013. The landlord entered into written evidence a copy of the Canada Post Tracking Number. I am satisfied that the landlord served the above documents and the evidence package to the tenant in accordance with the *Act*.

At the hearing, I noted that I had not received copies of some of the written evidence that the landlord's agent (the agent) referred to in her presentation. Although I asked her to send additional faxed copies of the 10 Day Notice and proof of service documents later that day, I was subsequently forwarded copies of the missing material that had not been forwarded to me in advance of this hearing. I apologize for any confusion or difficulty caused with respect to written evidence that the agent had clearly included in her written evidence package but had not been forwarded to me in advance of this hearing. I have based my decision on the written evidence provided by the landlord in advance of this hearing and the sworn testimony of the agent and the landlord's resident manager.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy commenced on August 7, 2012. Monthly rent is set at \$1,200.00, payable in advance by the first of each month, plus \$20.00 per month for parking. The landlord continues to hold the tenant's \$600.00 security deposit.

The landlord applied initially for an early end to tenancy pursuant to section 56 of the *Act* and for recovery of the filing fee for the landlord's application. The landlord subsequently amended this application by dropping the request for an early end to tenancy and by replacing this request with an application for an end to this tenancy on the basis of the 10 Day Notice.

The agent entered sworn oral testimony and written evidence to confirm that the landlord has accepted payments of \$920.00 on March 30, 2013, \$100.00 on April 2, 2013, and \$200.00 on April 3, 2013 from the tenant. The landlord provided oral and written evidence that each of these payments were accepted for use and occupancy only and not to extend this tenancy.

Analysis

I find that the landlord's acceptance of the above payments for use and occupancy only did not reinstate this tenancy. The tenant failed to pay the \$1,220.00 identified as owing in the 10 Day Notice in full within five days of receiving that Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by March 21, 2013. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord has been successful in this application, I allow the landlord's application to recover the \$50.00 filing fee from the tenant. Although the landlord's application does not seek to retain any portion of the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$50.00 from the tenant's security deposit.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to recover the \$50.00 filing fee for this application by retaining \$50.00 from the tenant's security deposit. I order that the revised value of the tenant's security deposit is reduced by \$50.00 to \$550.00.

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 01, 2013

Residential Tenancy Branch

