



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MND MNDC

Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord confirmed their intent on seeking money owed or compensation for damage or loss under the act regulation or tenancy agreement, by writing on their application that they were seeking rent for April and May 2013.

Based on the aforementioned I find the Landlord's intention of seeking to recover the payment for use and occupancy or loss of rent, for a period after the tenancy ended in accordance with the 10 Day Notice, was an oversight and/or clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application. Therefore I amend their application, pursuant to section 64(3)(c) of the Act.

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; for damage to the unit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

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 a copy of the 10 Day Notice to end tenancy for unpaid rent and the tenancy agreement.

The following facts were confirmed during this proceeding and were not in dispute:

- The parties entered into a fixed term tenancy that began on October 14, 2011 and switched to a month to month tenancy after October 31, 2012;
- Rent is payable on the first of each month and began at \$869.00;
- Rent has subsequently been increased to \$906.36 per month;
- On October 14, 2011 the Tenant paid \$434.50 as the security deposit;
- When the Tenant failed to pay April 2013 he received a 10 Day Notice for unpaid rent that was posted to his door on April 5, 2013;
- The Tenant continues to occupy the rental unit and confirmed that he has not paid rent for April or May 2013 and acknowledged that he owed late payment fees as a result.

The Tenant testified that he is self employed and works out of his home. He stated that he has not secured work in the past couple of months; therefore, he could not pay his rent. He is seeking to remain in the rental unit and pay his rent at a future date.

The Landlord testified that she is proceeding with their application and requested that the Order of Possession and Monetary Order for unpaid rent and late payment fees be granted.

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 confirmed receipt of the 10 Day Notice on April 5, 2013; therefore, the effective date of the Notice is **April 15, 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 \$906.36 which was due April 1, 2013. 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 for April 2013 in the amount of **\$906.36**.

As noted above this tenancy ended **April 15, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for May 2013, not rent. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and they will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of May 2013, in the amount of **\$906.36**.

The Landlord is seeking \$25.00 for late payment fees for April 2013 and May 2013 in accordance with the tenancy agreement. This tenancy ended April 15, 2013, therefore the Landlord may not make a claim for late payment fees for May 2013, as this tenancy was no longer in effect at that time. Therefore I dismiss the Landlord's claim of \$25.00 for May 2013 late fees and award them late payment fees for April 2013 in the amount of **\$25.00**.

There was no evidence submitted in regards to a claim for damages. Therefore that claim is dismissed.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

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 **\$1,887.72** (\$906.36 + \$906.36 + \$25.00 + \$50.00) 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: May 17, 2013

Residential Tenancy Branch