



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC VILLAGE II c/o GATEWAY PROPERTY MANAGEMENT CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNDC FF

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 "*claiming for unpaid rent & utilities plus filing fee*" in the details of dispute on their original application. The Landlord affirmed that the Tenant continues to reside in the unit and he did not pay rent for April or 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 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 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 April 23, 2013, by registered mail. Canada Post tracking information (RW757034076CA) was provided in the Landlord's testimony. Based on the submissions of the Landlord I find the Tenant is deemed served notice of this proceeding on April 28, 2013, five days after they were 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 a copy of the 10 Day Notice to end tenancy for unpaid rent.

The Landlord stated that the parties entered into a fixed term tenancy agreement that began on August 1, 2012 and is set to switch to a month to month tenancy after July 31, 2013. Rent is payable on the first of each month in the amount of \$1,100.00 and \$250.00 was paid on July 26, 2012 as the security deposit. The Tenant had an accumulated balance owing of \$2,059.06 as of March 31, 2013 and failed to pay the April or May 2013 rent. A 10 Day Notice was posted to the Tenant's door on April 5, 2013, in the presence of a witness.

The Landlord has sought to regain possession of the unit as soon as possible and to recover the unpaid rent plus the filing fees.

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 is deemed to have received the 10 Day Notice on April 8, 2013, three days after it was posted to his door, and the effective date of the Notice is **April 18, 2013**, in accordance with section 90 of 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 \$3,159.06 which accumulated and was due on 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 of **\$3,159.06**.

As noted above this tenancy ended **April 18, 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 **\$1,100.00**.

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

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

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 **\$4,309.06** (\$3,159.06 + \$1,100.00 + \$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 22, 2013

Residential Tenancy Branch

