



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord stated that he wished to amend his application to include unpaid rent for May 2013 because the Tenant is still residing in the unit and has not paid May rent. The Tenant confirmed that he has not paid the past due or May 2013 rent and he continues to occupy the rental unit.

Based on the aforementioned I informed both parties that I would be amending the Landlord's application to include his request for May 2013 rent under *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, 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 and for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.

The Landlord submitted documentary evidence which indicates the Tenant was personally served with copies of the Landlord's application for dispute resolution and Notice of dispute resolution hearing on May 2, 2013. The Tenant appeared and confirmed receipt of the hearing documents and the 10 Day Notice.

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 parties confirmed they entered into a fixed term tenancy that began on May 1, 2012 and is set to switch to a month to month tenancy after 12 months. Rent is payable on the first of each month in the amount of \$850.00 and on May 1, 2012, the Tenant paid \$425.00 as the security deposit.

The Landlord testified that since issuing the 10 Day Notice on April 4, 2013, for \$2,180.00 in unpaid rent the Tenant has made the following three payments: \$200.00 on April 10, 2013; \$375.00 on April 11, 2013; and \$375.00 on April 24, 2013. As of April 30, 2013 the Tenant owed \$1,230.00 for rent and he did not pay any of the \$850.00 rent that is due for May 2013.

The Tenant testified and confirmed that he owes the Landlord past rent; however, he has not been able to get the money to pay him. He requested more time to get the money together.

The Landlord stated that he has been reasonable and he needs for the Tenant to either pay his rent or move out.

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 7, 2013, three days after it was posted to her door, and the effective date of the Notice is **April 17, 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 \$1,230.00 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 of **\$1,230.00**.

As noted above this tenancy ended **April 17, 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 then 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 **\$850.00**.

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. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order in the amount of **\$2,080.00** (\$1,230.00 + \$850.00). 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 27, 2013

Residential Tenancy Branch

