



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding B+K Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant – CNR

For the landlord OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant has applied to cancel a Notice to End tenancy for unpaid rent. The landlord has applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony. The landlord and tenant 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 tenant entitled to have the 10 Day Notice to End Tenancy Cancelled?
- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord permitted to keep the security deposit?

Background and Evidence

The parties agree that this month to month tenancy started on June 01, 2011. Rent for this unit is now \$850.00 per month and is due on the first of each month. The tenant paid a security deposit of \$412.50 on June 01, 2011. The landlord has provided a copy of the tenancy agreement signed by both parties.

The landlord testifies that the tenant failed to pay all the rent for April, 2013. The tenant paid \$425.00 on April 02, 2013 leaving an unpaid balance of \$425.00. The landlord served the tenant with a 10 Day Notice to End Tenancy on April 09, 2013 which states the tenant owes \$425.00 due on April, 01, 2013 and the Notice is effective on April 19, 2013. The landlord testifies that the tenant paid \$235.00 on April 26 leaving an unpaid balance for April of \$190.00. The tenant failed to pay any rent for May, 2013. The total amount of outstanding rent is \$1,040.00. The landlord seeks a Monetary Order to recover the unpaid rent.

The landlord seeks an Order of Possession for unpaid rent and requests an Order to permit the landlord to keep the security deposit and recover the filing fee of \$50.00.

The tenant does not dispute that rent of \$1,040.00 is owed for April and May. The tenant states there were problems with another tenant which the landlord did not do anything about. The tenant testifies that it has been expensive moving from the unit. The tenant testifies that he has started to move from the rental unit but still remains in possession of the unit as there are still belongings of the tenants in the unit and the keys have not yet been returned to the landlord.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. *S. 26 of the 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.

Consequently, I find the tenant has failed to pay rent for April, 2013 of \$190.00 and May, 2013 of \$850.00 Therefore, the landlord is entitled to recover the sum of **\$1,040.00** for unpaid rent from the tenant.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$412.50** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a Monetary Order for the balance owing as follows:

Outstanding rent	\$1,040.00
Less Security Deposit	(-\$412.50)
Plus filing fee	\$50.00
Total amount due to the landlords	\$677.50

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

The tenant's application to cancel the 10 Day Notice to End Tenancy is dismissed without leave to reapply.

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$677.50**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service upon the tenant**. This order must be served on the Respondent and may be filed in the Supreme 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 16, 2013

Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order*
(Please Note: Legislated deadlines apply)

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca