



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0761500 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

Introduction:

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Agent for the Landlord stated that he personally served the Tenant with copies of the Application for Dispute Resolution and Notice of Hearing on May 14, 2013. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided:

Is the Landlord entitled to an Order of Possession; to a monetary Order for unpaid rent/lost revenue; and to keep all or part of the security deposit?

Background and Evidence:

The Company Owner stated that this tenancy began on December 01, 2007; that the rent during the latter part of the tenancy has been \$726.00; that rent is due by the first day of each month; that the Tenant paid a security deposit of \$350.00; that the Tenant did not pay rent when it was due on May 01, 2013; that the Tenant paid the rent for May on May 24, 2013; and that rent has not been paid for June.

The Agent for the Landlord stated that on May 02, 2013 he posted a Ten Day Notice to End Tenancy for Unpaid Rent on the Tenant's door, which had a declared effective date of May 13, 2013. He stated that he received the rent for May, in cash, on May 24, 2013 but he cannot recall if he provide the Tenant with a receipt for that payment.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$726.00 by May 01, 2013; that the rent was not paid when it was due on May 01, 2013; that a Ten Day Notice to End Tenancy was posted on the door of the rental unit on May 02, 2013; and that on May 24, 2013 the Tenant paid all of the rent that was in arrears at that time.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. As the rent for May was not paid until May 24, 2013 and a Notice to End Tenancy was posted at the rental unit on May 02, 2013, I find that the Landlord had the right to end this tenancy in accordance with section 46 of the *Act*.

Section 46(5) of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I find that the Landlord is entitled to an Order of Possession.

I find that the Tenant breached the tenancy agreement when he did not pay rent when it was due and that the Tenant breached section 46(5) of the *Act* when he did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that his continued occupancy of the rental unit makes it difficult, if not impossible, for the Landlord to find new tenants for June of 2013. I therefore find that the Tenant must compensate the Landlord for the loss of revenue the Landlord can reasonably be expected to experience during the month of June.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

As I have ordered the Tenant to pay rent for June of 2013, I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on June 30, 2013. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$776.00, which is comprised of \$726.00 in lost revenue and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(1) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$350.00 plus interest of \$5.69 in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$420.31. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: June 06, 2013

Residential Tenancy Branch

