



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Confide Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent, for authority to retain the tenants' security deposit and to recover the filing fee.

The landlord appeared; the tenants did not appear.

The landlord provided evidence that the tenants were each served with their Application for Dispute Resolution and Notice of Hearing by leaving it with the tenants on May 23, 2013. The landlord supplied a signed document from the previous building manager indicating the service of the hearing documents. The delivery of the documents was also witnessed, with the accompanying signature.

I find the tenants were served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenants' absence.

The landlord was provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue-The attending landlords said that they represent the corporate landlord, HII, who has taken over ownership of the residential property from the corporate landlord, CEL, listed in the application for dispute resolution in the latter part of May. I have accepted the attending landlords' evidence and their request to amend the application, and have listed HII solely in any accompanying order of possession for the rental unit and monetary order which may be granted.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, a monetary order and to recover the filing fee?

Background and Evidence

The landlord supplied evidence that this tenancy began on May 1, 2012, current monthly rent is \$675, and a security deposit of \$337.50 was paid by the tenants at the beginning of the tenancy.

The landlord supplied evidence that on May 3, 2013, the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by posting it on the tenants' door, listing unpaid rent of \$1350 as of May 1, 2013. The effective vacancy date listed on the Notice was May 13, 2013.

Section 90 of the Act states that documents served by posting on the door are deemed delivered three days later. Thus the tenants were deemed to have received the Notice on May 6, 2013, and the effective move out date is automatically changed to May 16, 2013, pursuant to section 53 of the Act.

The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenants had five days to dispute the Notice by making an application for dispute resolution.

The landlord stated that the tenants did make a payment of \$675 in June; however the landlord said that as of the day of the hearing, there was no proof that the cheque had cleared the bank. The landlord believed the cheque would ultimately clear the bank and requested monetary compensation in the amount of \$700 through June, with \$25 of this amount being a late payment fee.

I have no evidence before me that the tenants applied to dispute the Notice.

Analysis

Based on the oral and written evidence and on a balance of probabilities, I find the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective two days after service of the order upon the tenants.

I also find that the landlord is entitled to a monetary award of \$750 comprised of outstanding rent of \$700 through June, 2013, and the \$50 filing fee paid by the landlord for this application.

Conclusion

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenants are advised that costs of such enforcement such as bailiff fees are recoverable from the tenants.

At the landlord's request, I allow the landlord to retain the tenants' security deposit of \$337.50 in partial satisfaction of the claim.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$412.50, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

If the tenants' rent cheque in the amount of \$675 fails to clear the bank and the landlord does not ultimately receive the funds, the landlord is at liberty to request from the Residential Tenancy Branch ("RTB") an amended monetary order to include this amount.

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* and is being mailed to both the applicant and the respondents.

Dated: June 14, 2013

Residential Tenancy Branch

