



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES LIMITED
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of a conference call in response to an Application for Dispute Resolution made by the landlord for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of this application.

At the start of the hearing the landlord indicated that only an Order of Possession for unpaid rent or utilities was required and as a result, withdrew the portion of the application relating to the unpaid rent and recovery of the filing fee for the cost of this application.

The landlord served the tenant by hand on May 27, 2013 with a copy of the application and Notice of Hearing. There was no appearance for the tenant during the hearing and in the absence of any verbal testimony to refute this method of service, I find the tenant was served in accordance with the *Residential Tenancy Act*.

The landlord was also permitted, under Section 11.5 of the Rules of Procedure, to provide additional evidence after the hearing had concluded; this included rent receipts which were issued to the tenant when cash payments were made. All the verbal testimony and documentary evidence submitted prior to this hearing was carefully considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The landlord testified that the tenancy began on January 1, 2011 for a fixed term of one year which then went on to a month-to-month basis. The current monthly rent is \$1,171.00 payable on the first day of every month, which includes two car parking spaces. The landlord collected a security deposit from the tenant in the amount of \$495.00 on December 11, 2010 and a written tenancy agreement was signed by both parties.

The landlord testified that on May 1, 2013 the tenant failed to pay rent. As a result, the landlord served the tenant with a 10 Day Notice for Unpaid Rent or Utilities on May 10, 2013 by posting it to the tenant's door. A copy was provided for this hearing along with a proof of service document signed by a witness verifying the service method. The notice is dated May 10, 2013 and shows the expected date of vacancy of May 20, 2013 due to \$1,231.00 in unpaid rent which was due on May 1, 2013.

The landlord testified that the outstanding balance of \$1,231.00 comprised of: \$1,171.00 for May, 2013 unpaid rent; \$35.00 for a non-sufficient-funds fee, charged by the landlord's bank; and a \$25.00 late rent payment fee as documented by Section 10 in the written tenancy agreement provided as evidence for this hearing.

The landlord testified that in the middle of May, 2013 the tenant made a payment of \$400.00 towards the outstanding balance. The landlord accepted the cash payment and issued the tenant with a rent receipt which indicated that the money was being accepted 'for use and occupancy'.

The landlord further testified that another payment of \$881.00 was made by the tenant on May 30, 2013 resulting in a credit balance of \$50.00. The landlord again accepted the cash payment but issued the tenant with a written receipt that stated payment was being accepted 'for use and occupancy'.

On June 1, 2013 the tenant again failed to pay rent. However, the tenant made a partial payment of \$600.00 the following day and another payment of \$400.00 on June 15, 2013. On both occasions, again, the landlord issued the tenant with a written receipt stating that payment was being accepted 'for use and occupancy only'.

After deducting the credit owed to the tenant in the amount of \$50.00 and including a \$25.00 late payment fee for the month of June, 2013, the landlord testified that to date,

there is only \$146.00 outstanding rent for the month of June, 2013. The landlord now seeks an Order of Possession for unpaid rent by the tenant.

Analysis

I have reviewed all documentary evidence submitted in relation to this hearing and accept that the tenant was served by the landlord with the notice to end tenancy on May 10, 2013, by posting it on the tenant's door. The *Act* states that documents served in this manner are deemed to have been served three days after. Therefore, I find that the tenant was deemed to be served on May 13, 2013, and the effective date of vacancy is automatically changed to May 23, 2013 pursuant to Section 53(1) of the *Act*.

I accept the evidence before me that the tenant failed to dispute the notice or pay the rent owed in full **within** the five days granted under Section 46(4) of the *Act*. As a result, I find that the tenant is conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on May 20, 2013. Therefore, the landlord is entitled to an Order of Possession for unpaid rent.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective 2 days **after** service on the tenant. This order may be filed and enforced in the Supreme Court 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 18, 2013

Residential Tenancy Branch

