



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wing Lee Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on May 27, 2013 copies of the amended Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service. The tenant did not pick up the mail and it was returned to the landlord.

The landlord then spoke to the tenant and gave her the hearing details; the tenant sent the landlord a message telling her would be in San Francisco at the time of the hearing and unable to participate.

These documents are deemed to have been served in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

Preliminary Matters

The landlord requested an amendment to the application, to include a claim for unpaid June 2013, rent. This amendment was allowed as rent is a term of the tenancy agreement, signed by the parties.

Issue(s) to be Decided

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

Is the landlord entitled to a monetary Order?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on February 1, 2013; rent is \$2,400.00 due on the first day of each month. A pet and security deposit each, in the sum of \$1,200.00 was paid but the cheque was returned as NSF. A copy of the tenancy agreement was supplied as evidence.

The landlord stated that on May 4, 2013 she posted a Ten Day Notice to End Tenancy for Unpaid Rent to the tenant's door. Service occurred at approximately 4 p.m. The landlord and tenant later spoke on the phone and the tenant confirmed receipt of the Notice.

The Notice had an effective date of May 4, 2013.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$6,040.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The landlord said that the tenant has been offered payment plans, has issued NSF cheques and given the landlord promissory notes. No rent has been paid since February 2013.

The landlord has claimed compensation in the sum of \$9,600.00 for rent owed from March to June 2013, inclusive and an Order of possession.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the tenant received the Notice to End Tenancy on May 7, 2013.

Section 46(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on May 7, 2013, I find that the earliest effective date of the Notice is May 17, 2013.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was May 17, 2013.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on May 17, 2013, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no

evidence that the tenant exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; May 17, 2013. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served to the tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$9,600.00 for the months of March, April, May and June 2013, inclusive, and that the landlord is entitled to compensation in that amount.

As the evidence before me indicates that the landlord paid a \$50.00 filing fee and, as the filing fee for a claim over \$5,000.00 is \$100.00, I decline filing fee costs to the landlord.

Based on these determinations I grant the landlord a monetary Order in the sum of \$9,600.00. 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.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The landlord is entitled to an Order of possession and a monetary Order.

The landlord is entitled to the filing fee cost.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 21, 2013

Residential Tenancy Branch

