



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, 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, compensation for damage or loss under the Act, to retain all or part of the security deposit, and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matter

The female tenant was not present at the hearing. The landlord provided affirmed testimony that the female tenant was served Notice of the hearing, sent via registered mail on June 6, 2013. The Canada Post web site indicated the mail had not been retrieved, a final notice had been left for the tenant on June 22, 2013. A copy of the Canada Post receipt and tracking number was supplied as evidence.

Section 90 of the Act determines that registered mail is served on the 5th day after mailing. Therefore, I find that the female co-tenant and respondent was served with Notice of this hearing. A failure to retrieve registered mail does not avoid service.

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 for unpaid rent and loss of rent revenue?

May the landlord retain the security deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on November 1, 2012; rent is \$800.00 per month, due on the 1st day of each month. A deposit in the sum of \$400.00 was paid. A copy of the tenancy agreement was supplied as evidence.

The landlord provided a proof of service document signed by the female tenant, indicating that on May 21, 2013 at 6 p.m. she received a Ten Day Notice to End Tenancy for Unpaid Rent issued on that date.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,970.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were 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 tenant said that he currently owes the landlord \$1,970.00 rent; \$770.00 for April, \$800.00 for May and \$400.00 for June 2013.

The tenant said he was given a 2nd 10 Day Notice issued on June 14, 2013 for \$2,370.00 in unpaid rent. that Notice had an effective date of June 24, 2013. The tenant did not dispute that rent owed has not been paid. The landlord's agent was not aware that this Notice had been issued.

The landlord has requested an Order of possession and monetary Order base on unpaid rent, as confirmed by the tenant.

Analysis

I find that the tenants were served with Notice ending the tenancy effective May 21, 2013, when the female co-tenant accepted the Notice.

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 30, 2013, pursuant to section 46 of the Act. When the landlord issued a 2nd 10 Day Notice I find that the effective end date of the tenancy was extended to June 24, 2013.

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. The tenant confirmed that only \$400.00 rent has been paid since the May 21, 2013 Notice was issued and that the Notices were not disputed. Therefore, I find that the tenants accepted that the tenancy has ended effective June 24, 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 tenants.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$1,970.00 for April, May and June 2013 rent, and that the landlord is entitled to compensation in that amount.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the sum of \$400.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order in the sum of \$1,620.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, 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 tenants**. This Order may be served on the tenants, 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 may retain the security deposit.

The landlord is entitled to filing fee costs.

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 26, 2013

Residential Tenancy Branch

