



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNDC, MNSD, 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, to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution. At the hearing the Landlord withdrew the application for a monetary Order.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant at the rental unit, via registered mail, on May 24, 2013. The Landlord cited a Canada Post tracking number that corroborates this statement. 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.

The Landlord stated that she submitted documents to the Residential Tenancy Branch, including a copy of a Ten Day Notice to End Tenancy, on May 23, 2013. She stated that she served copies of these documents to the Tenant when she served the Application for Dispute Resolution. The Landlord was advised that I did not have a copy of those documents at the time of the hearing. She was given the opportunity to submit a duplicate of the Ten Day Notice to End Tenancy to the Residential Tenancy Branch. The Landlord submitted another copy of the Ten Day Notice to End Tenancy, which was viewed by me prior to rendering this decision.

Issue(s) to be Decided:

Is the Landlord entitled to an Order of Possession for unpaid rent and to keep all or part of the security deposit?

Background and Evidence:

The Landlord stated that this tenancy began on November 01, 2010; that the Tenant is required to pay monthly rent of \$1,450.00 by the first day of each month; and that the Tenant paid a security deposit of \$725.00.

The Landlord stated that the Tenant did not pay any rent for May until May 25, 2013, at which time it was paid in full.

The Landlord stated that on April 19, 2013 she served the Tenant with a Two Month Notice to End Tenancy, via registered mail, which requires him to vacate the unit by June 30, 2013. She stated that the Tenant is not obligated to pay rent for June, as he has been served with the Two Month Notice to End Tenancy.

The Landlord stated that she put a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of May 25, 2013, on the door of the rental unit on May 24, 2013. The Notice declared that the Tenant owed \$1,450.00 in rent.

Analysis

On the basis of undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$1450.00 by the first day of each month, and that the rent for May of 2013 had not been paid by May 14, 2013.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy for Unpaid Rent was posted on the door of the rental unit on May 14, 2013, which directed the Tenant to vacate the rental unit by May 25, 2013, pursuant to section 46 of the *Act*.

Section 46 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.

As the Tenant is entitled to remain in the rental unit without paying rent for June until the end of June, pursuant to section 51(1) of the *Act*, and the rent for May has now been paid in full, I find that the Order of Possession shall not take effect until June 30, 2013.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the fee for filing Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain \$50.00 from the Tenant's security deposit in compensation for the filing fee.

Conclusion

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.

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

