



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd & Rotary Tower
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order. The hearing was conducted via teleconference and was attended by two agents for the landlord

The landlord provided documentary evidence to confirm the tenants were served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on May 28, 2013 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenants on the 5th day after it was mailed.

Based on the documentary evidence of the landlord, I find that the tenants have been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the tenancy began on June 1, 1991 as a month to month tenancy for the current monthly rent of \$505.00 due on the 1st of each month. The landlord did not provide a copy of a tenancy agreement.

The landlord provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on May 13, 2013 with an effective vacancy date of May 23, 2013 due to \$537.00 in unpaid rent.

The landlord submitted the tenants failed to pay the full rent owed for the months of May and June 2013 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on May 13, 2013.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

The landlord seeks also to be reimbursed \$50.00 for late and NSF fees for the returned cheque for the payment of rent for the month of May, 2013.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on May 16, 2013 and the effective date of the notice is amended to May 26, 2013 pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenants are conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Residential Tenancy Regulation 7 allows the landlord to charge an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent. The regulation restricts the landlord's ability to charge these fees to tenancies where the tenancy agreement stipulates the charges.

As the landlord has failed to provide a copy of the tenancy agreement to provide confirmation that there is such a clause in the tenancy agreement I find the landlord has failed to establish that the tenancy agreement requires the tenants to pay any sort of late or NSF fee. I dismiss this portion of the landlord's Application.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,042.00** comprised of \$992.00 rent owed and the \$50.00 fee paid by the landlord for this Application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 24, 2013

Residential Tenancy Branch

