



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cyclone Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

Agreed facts: The tenancy began on April 1, 2013. At the outset of the tenancy, the Landlord collected \$380.00 as a security deposit from the Tenant. The Tenant failed to pay rent for June 2013 and on June 2, 2013 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the “Notice”) by posting the Notice on the door. The Tenant has not made an application for dispute resolution, has not paid the arrears, has not moved out of the unit and has not paid July 2013 rent.

The Landlord states that the tenancy agreement provides for monthly rent of \$785.00 upon an additional occupant in the unit. The Landlord states that an additional occupant was in the unit shortly after the tenancy started. The Tenant agrees that rent of \$785.00 is payable.

The Tenant states that rent was unpaid due to the presence of bugs in the unit and that the Landlord did not carry out any extermination of the unit.

The Landlord withdraws the claim for late fees and claims unpaid rent for June and July 2013.

Analysis

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent (the "Notice") the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Although the Tenant states that rent was unpaid due to the Landlord's failure to exterminate the unit, given the Act's requirement to pay the rent regardless of a landlord's failure or negligence, considering the undisputed evidence that rent has not been paid and noting that the Tenant has not filed an application to dispute the Notice, I find that the Landlord is entitled to an **Order of Possession**. Based on the undisputed evidence of the amount of rent payable, I also find that the Landlord has established a monetary claim for **\$1,570.00** in unpaid rent. The Landlord is entitled to recovery of the **\$50.00** filing fee for a total monetary amount of **\$1,620.00**. Setting the security deposit of \$380.00 plus zero interest off the entitlement leaves **\$1,240.00** owed by the Tenant to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order that the Landlord retain the **deposit** and interest of \$380.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$1,240.00**. If necessary, this order may be filed in the Small Claims Court 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: July 23, 2013

Residential Tenancy Branch

