



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SOUTHWOOD VENTURES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on August 30, 2013, by the Landlord to obtain an Order of Possession and a Monetary Order for: unpaid rent or utilities; to keep all or part of the pet and or security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord provided affirmed testimony that the Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on September 5, 2013, by registered mail. Canada Post receipts were provided in the Landlord's testimony. Based on the submissions of the Landlord I find the Tenant is deemed served notice of this proceeding on September 10, 2013, five days after it was mailed, in accordance with section 90 of the Act; therefore I proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Should the Landlord be awarded an Order of Possession?
2. Should the Landlord be granted a Monetary Order?

Background and Evidence

The Landlord testified that his company purchased this building in approximately July 2011 through a court appointed sale. The previous owner did not provide them with copies of any tenancy agreements; therefore, the Landlord does not know when this Tenant began occupying the rental unit or how much of a security deposit was paid.

The Landlord stated that the Tenant stopped paying his \$425.00 month rent in approximately April 2013. On August 20, 2013, a 10 Day Notice for \$1,700.00 unpaid rent was posted to the Tenant's door, in the presence of a witness.

The Landlord checked on the unit on October 7, 2013, and the Tenant continues to reside there even though he has not made a payment towards his rent. The Landlord is seeking an Order of Possession and a Monetary Order for the unpaid rent.

Analysis

Order of Possession – When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on August 23, 2013, three days after it was posted to his door, in accordance with section 90 of the Act. The Tenant has not applied to cancel the Notice and has not paid the rent within the required timeframes. Therefore, I find the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, **September 2, 2013**, and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

Claim for unpaid rent - The Landlord claimed unpaid rent of \$2,125.00 that was due as of September 1, 2013 (\$1,800.00 as of August 1st plus \$425.00 for September).

A “**tenancy agreement**” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

In the absence of a written tenancy agreement, I find the parties are considered to have a verbal tenancy agreement, effective when the new owner purchased the property in July 2011. Based on that verbal agreement the Tenant was required to pay rent on or before the first of each month in the amount of \$425.00.

Section 26 of the Act stipulates that a tenant must pay rent when it is due in accordance with the tenancy agreement. Therefore, I find the Tenant breached section 26 of the Act, and I award the Landlord compensation for unpaid rent up to September 1, 2013 in the amount of **\$2,125.00**.

Use & Occupancy and loss of rent – As noted above this tenancy ended **September 2, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy and loss of rent of the unit for October 2013.

The Landlord will not regain possession of the unit until after service of the Order of Possession and then has the obligation to ready the unit and attempt to re-rent it as soon as possible. Therefore I award the Landlord use and occupancy and loss of rent for the entire month of October 2013 in the amount of **\$425.00**.

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

The Landlord has filed to retain the security deposit; however, at the time of this proceeding the Landlord did not know the amount of security deposit being held. Therefore, I Order that any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND the Landlords are entitled to an Order of Possession effective **Two days upon service**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$2,600.00** (\$2,125.00 + \$425.00 + \$50.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia 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: October 11, 2013

Residential Tenancy Branch

