



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OPR, OPC, OPL, MNR, MNSD, FF

Introduction:

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, an Order of Possession for Cause, an Order of Possession for Landlord's Use of Property, 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.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End tenancy for Cause.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided:

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

Background and Evidence:

The Landlord and the Tenant agree that this tenancy began approximately 2.5 years ago; that the Tenant is required to pay monthly rent of \$850.00 by the first day of each month; and that the Tenant paid a security deposit of \$400.00. The parties agree that \$650.00 was paid for rent for May of 2013; \$445.00 was paid for June of 2013; and \$445.00 was paid for July of 2013.

The Landlord stated that on April 09, 2013 she posted a Two Month Notice to End Tenancy for Landlord's Use of Property on the Tenant's door, which declared that he must vacate the rental unit by June 09, 2013. The Tenant stated that he received this

Notice a couple of days after April 09, 2013 and that he did not file an Application for Dispute Resolution to dispute the Notice.

The Landlord stated that on May 08, 2013 she posted a Ten Day Notice to End Tenancy for Unpaid Rent on the Tenant's door, which declared that he must vacate the rental unit by May 08, 2013. The Tenant stated that he received this Notice a couple of days after May 08, 2013 and that he did not file an Application for Dispute Resolution to dispute the Notice.

The Landlord stated that on May 19, 2013 she posted a One Month Notice to End Tenancy for Cause on the Tenant's door, which declared that he must vacate the rental unit by June 19, 2013. The Tenant stated that he received this Notice a couple of days after May 19, 2013 and the he did file an Application for Dispute Resolution to dispute this Notice.

The Landlord and the Tenant agree that the Tenant has not yet vacated the rental unit.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$850.00 by the first day of each month.

On the basis of the undisputed evidence, I find that a Two Month Notice to End Tenancy for Landlord's Use of Property was posted on the door of the rental unit on April 09, 2013. Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. Given that the Tenant does not recall the exact day he received this Notice, I find that it is deemed received on April 12, 2013.

Section 49(2) of the *Act* stipulates that a Two Month to End Tenancy is effective on a date that is not earlier than 2 months after the date the tenant receives the Notice and the day before the day in the month that rent is due. As the Tenant is deemed to have received this Notice on April 12, 2013 and rent is due by the first day of each month, I find that the earliest effective date of the Notice was June 30, 2013.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was June 30, 2013.

Section 49(9) 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 file an Application for Dispute Resolution to dispute the Notice within fifteen days of receiving the Notice to End Tenancy. As there is no evidence that the Tenant disputed the Two Month Notice to End Tenancy for Landlord's Use of Property, I

find that the Tenant accepted that the tenancy ended on the effective date of this Notice. On this basis I find that the Landlord is entitled to an Order of Possession.

As I have determined that the Landlord is entitled to an Order of Possession on the strength of the Two Month Notice to End Tenancy for Landlord's Use of Property, I find that I do not need to determine if the Landlord is also entitled to an Order of Possession on the basis of the One Month Notice to End Tenancy or the Ten Day Notice to End Tenancy that were posted in May of 2013. Similarly, I do not need to consider the Tenant's application to set aside the One Month Notice to End Tenancy.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. As the Tenant received a Two Month Notice to End Tenancy pursuant to section 49 of the *Act*, I find the Tenant is entitled to compensation in the amount of \$850.00, which is the equivalent of one month's rent.

On the basis of the undisputed evidence, I find that the Tenant did not pay \$205.00 of the rent that was due for May of 2013. As the Landlord received a rent payment of \$445.00 for June of 2013 and the Tenant was not obligated to pay any rent for June of 2013, I find that \$205.00 of this payment shall be applied to the outstanding rent for May and the remaining \$240.00 must be returned to the Tenant or applied to any money owed to the Landlord for rent accruing in July of 2013.

As the Tenant has not yet vacated the rental unit, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remains in possession of the rental unit. As the Tenant is still in possession of the rental unit I find that the Tenant must compensate the Landlord for the two days in July that the Tenant has remained in possession of the rental unit, at a daily rate of \$27.42, which equates to \$54.84. As the Landlord received a rent payment of \$445.00 for July of 2013, I find that \$54.84 of this payment shall be applied to the outstanding rent for July and the remaining \$390.16 must be returned to the Tenant or applied to any money owed to the Landlord for rent accruing in July of 2013.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. I allow the Landlord to retain \$50.00 from the Tenant's security deposit as compensation for the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. 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: July 02, 2013

Residential Tenancy Branch