



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Plaza 200 Apartments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 3:13 p.m. in order to enable him to connect with this teleconference hearing scheduled for 3:00 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord's male representative testified that he handed the tenant the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) at 7:20 p.m. on September 4, 2013. The landlord also submitted a written copy of a signed and witnessed Proof of Service document attesting to his hand delivery of the 10 Day Notice to the tenant at that time and date. I am satisfied that the tenant was served with the landlord's 10 Day Notice in accordance with the *Act*.

The landlord also submitted written evidence that the landlord sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on September 13, 2013. Although this package was returned to the landlord as unclaimed, pursuant to sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's hearing package on September 18, 2013, the fifth day after its mailing.

At the commencement of the hearing, the female landlord (the landlord) testified that the tenant had paid all amounts currently owed to the landlord. She said that he paid \$820.00, including a \$20.00 late fee, on September 20, 2013, and a further \$820.00 on October 9, 2013. As such, she withdrew the landlord's application for a monetary award. The landlord's application for a monetary Order is withdrawn.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

This tenancy began as a six-month fixed term tenancy on February 1, 2011. When the initial term expired, the tenancy continued as a periodic tenancy. Monthly rent is \$800.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$400.00 security deposit paid on January 27, 2011.

The landlord's original application requested a monetary award of \$1,620.00 for unpaid rent and the late fee owing for September 2013, and anticipated rental losses of \$800.00 for October 2013. As noted above, the landlord testified that the tenant did not pay any portion of the \$800.00 identified as owing in the 10 Day Notice until September 20, 2013, well beyond the five day period for doing so. The landlord requested the issuance of an Order of Possession based on the 10 Day Notice. The landlord's male representative testified that both receipts for the above two payments were made for "use and occupancy only" and not to reinstate this tenancy.

Analysis

I first note that the landlord's acceptance of payments on September 20, 2013 and October 9, 2013, for use and occupancy only, did not reinstate this tenancy. The tenant failed to pay the \$800.00 identified as owing in the 10 Day Notice in full within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by September 14, 2013. As that has not occurred, I find that the landlord is entitled to an Order of Possession that takes effect by 1:00 p.m. on October 31, 2013. This is the date when the landlord's acceptance of the tenant's payment for use and occupancy only for the month of October 2013 ends. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by 1:00 p.m. on October 31, 2013, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective at 1:00 p.m. on October 31, 2013. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord's application for a monetary Order is withdrawn.

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 24, 2013

Residential Tenancy Branch

