



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, FF

Introduction

This hearing was scheduled in response to the landlord's application for an order of possession / a monetary order as compensation for unpaid rent / and recovery of the filing fee. The landlord's agent attended and gave affirmed testimony.

Despite service of the application for dispute resolution and notice of hearing (the "hearing package") by way of registered mail, the tenant did not appear. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was "unclaimed by recipient."

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy began on May 1, 2010. Monthly rent is due and payable in advance on the first day of each month. The current monthly rent is \$735.00. A security deposit of \$365.00 was collected on April 23, 2010.

Arising from rent which remained unpaid when due on October 1, 2013, the landlord issued a 10 day notice to end tenancy for unpaid rent in the amount of \$845.00, by date of October 2, 2013 (\$110.00: September and \$735.00: October). The notice was served by way of posting on the unit door on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is October 15, 2013. The tenant continues to reside in the unit, however, rental payments have subsequently been limited as follows:

\$735.00: October 6, 2013 AND \$670.00: November 2, 2013

During the hearing the landlord testified that 2 of the tenant's previously issued rent cheques have "bounced." However, the landlord's original application has not been amended to reflect a change in the amount of compensation sought for unpaid rent.

Analysis

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord's agent, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated October 2, 2013. The tenant did not pay the full amount of outstanding rent within 5 days of receiving the notice, and did not apply to dispute the notice. The tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlord has established entitlement to an **order of possession**.

As to compensation, I find that the landlord has established a claim of **\$225.00**:

\$110.00: (\$845.00 - \$735.00) *unpaid rent for September / October*

\$65.00: (\$735.00 - \$670.00) *unpaid rent for November*

\$50.00: *filing fee*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**, in part:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Following from all the above, I order that the landlord retain **\$225.00** from the tenant's security deposit of **\$365.00**. As to the disposition of the balance of the security deposit of **\$140.00** (\$365.00 - \$225.00) the attention of the parties is drawn to section 38 of the Act which speaks to **Return of security deposit and pet damage deposit**.

The matter of previously issued rent cheques unable to be negotiated because of not sufficient funds ("NSF") is not presently before me. In this regard the landlord has the option of filing another application for dispute resolution, seeking a monetary order reflecting compensation arising from same.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant.

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.

The landlord is hereby ordered that **\$225.00** may be withheld from the tenant's security deposit of \$365.00 at the end of tenancy.

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: November 28, 2013

Residential Tenancy Branch

