



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Triumph Management (537070 BC Ltd.)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, MNR, MNSD, FF

Introduction:

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, 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 Agent for the Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were sent to the Tenant at the rental unit, via registered mail, on November 23, 2013. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided:

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

Background and Evidence:

The Agent for the Landlord stated that this tenancy began on August 01, 2013; 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 \$425.00.

The Agent for the Landlord stated that on November 04, 2013 the Tenant owed \$240.00 in rent for October of 2013 and \$850.00 in rent for November of 2013; that on November 30, 2013, \$910.00 in rent was paid to the Landlord; and that on December 14, 2013 \$610.00 in rent was paid to the Landlord. The Landlord is seeking compensation for all rent that is currently due for the period ending January 31, 2013, which the Landlord contends is \$1,270.00.

The Resident Manager stated that on November 04, 2013 he personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective

date of November 14, 2013. The Notice declared that the Tenant owed \$1,090.00 in rent that was due on November 01, 2013.

The Agent for the Landlord stated that the Tenant is still living in the rental unit.

Analysis

On the basis of the undisputed evidence, I find that the Tenant was obligated to pay monthly rent of \$850.00 by the first day of each month; that the Tenant owed \$1,090.00 in rent on November 04, 2013; and that the Tenant owed \$180.00 in rent on November 30, 2013. As he is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$180.00 in outstanding rent for November to the Landlord.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. In the absence of evidence to the contrary, I find that on November 04, 2013 the Tenant was personally served with a Notice to End Tenancy that directed the Tenant to vacate the rental unit by November 14, 2013, pursuant to section 46 of the *Act*.

Section 46 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 either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I find that the Landlord is entitled to an Order of Possession.

As the Tenant did not vacate the rental unit on November 14, 2013, I find that he is obligated to pay rent, on a per diem basis, for the days he remained in possession of the rental unit. As he has already been ordered to pay rent for the period between November 15, 2013 and November 30, 2013, I find that the Landlord has been fully compensated for that period.

I find that the Tenant must pay rent for the entire month of December of 2013, as he occupied the unit during that month. As \$610.00 in rent was paid on December 14, 2013, I find that the Tenant still owes \$240.00 in rent for this month.

I find that the Tenant must pay rent for the seven days in January of 2014 that he remained in possession of the rental unit, at a daily rate of \$27.42, which equates to \$191.94. I am unable to award compensation for the remainder of January, as it is possible the Tenant will vacate the unit today and the Landlord has not applied for compensation for lost revenue.

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.

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.

The Landlord has established a monetary claim, in the amount of \$661.94, which is comprised of \$611.94 unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain the Tenant's security deposit of \$425.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$236.94. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: January 07, 2014

Residential Tenancy Branch

