



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord participated in the teleconference hearing, but the tenant did not call into the hearing. The landlord submitted evidence that they served the tenant with the application for dispute resolution and notice of hearing by registered mail on December 20, 2013. Section 90 of the Act states that a document is deemed to have been served five days after mailing. I found that the tenant was deemed served with notice of the hearing on December 25, 2013, and I proceeded with the hearing in the absence of the tenant.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Background and Evidence

The tenancy began on September 1, 2013 as a fixed term tenancy to end September 1, 2014. Rent in the amount of \$925 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$462.50, as well as a pet deposit of \$462.50.

The tenant failed to pay full rent in the month of November 2013 and on November 27, 2013 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant further failed to pay rent in the months of December and January 2013. The landlord has claimed \$2280 in unpaid rent and lost revenue; \$50 for an NSF

fee and a late fee of \$25 each for December 2013 rent; and \$462.50 for a lease break fee.

The Landlord's evidence included the following:

- a copy of a residential tenancy agreement, signed by the tenant and the landlord, indicating a monthly rent of \$1400 due on the first of each month, and containing a clause indicating that if the tenant breaks the lease before the end of the fixed term, the tenant must pay a "penalty" of \$462.50;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on November 27, 2013, with an effective vacancy date of December 7, 2013, for failure to pay rent in the amount of \$730 that was due on November 1, 2013;
- testimony that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting the notice on the rental unit door on November 27, 2013; and
- a receipt for \$300 paid by the tenant on December 2, 2013 and accepted by the landlord for use and occupancy only.

Analysis

I have reviewed all evidence and I accept that the tenant was served with the notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on November 30, 2013.

I accept the evidence before me that the tenant has failed to pay the full rent owed within the five days granted under section 46(4) of the Act. I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. The landlord is therefore entitled to an order of possession.

As for the monetary order, based on the above-noted evidence I find that the landlord has established a claim for \$2280 in unpaid rent. I find that the landlord is not entitled to \$462.50 for the lease break fee, as this fee is clearly designated as a penalty, which is not permitted under the Act.

As the landlord's application was mostly successful, I find they are entitled to recovery of the \$50 filing fee for the cost of their application.

Conclusion

I grant the landlord an order of possession effective two days from service. The tenant must be served with the order of possession. 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 entitled to \$2330. I order that the landlord retain the security and pet deposits of \$925 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1405. This order may be filed in the 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 29, 2014

Residential Tenancy Branch

