



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RAJPUR HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MND MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep all or part of the security and or pet deposit; and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord testified that the Tenant was personally served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on December 20, 2013, and he signed acknowledging receipt. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding, in accordance with the Act. Therefore, I proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included a copy of the 10 Day Notice to end tenancy for unpaid rent and a tenancy agreement which indicates that the parties executed a written tenancy agreement for a month to month tenancy that commenced on November 1, 2010. The Tenant is required to pay rent of \$800.00 on the first of each month and in November 2010 the Tenant paid \$400.00 as the security deposit.

When the Tenant failed to pay the accumulated unpaid balance of rent of \$2,880.00 that was due December 1, 2013, the Landlord personally served the Tenant a 10 Day Notice on December 5, 2013, at 9:15 p.m. The Tenant signed the proof of service document acknowledging receipt of the 10 Day Notice.

The Landlord advised that the Tenant continues to reside in the unit and has made only two payments towards rent as follows: January 18, 2014 he paid \$600.00 and on January 31, 2014 he paid \$250.00. The new balance owing as of February 7, 2014 is \$3,630.00. The Landlords seeks to regain possession of the unit as soon as possible and to recover the unpaid rent to the end of February 2014.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant received the 10 Day Notice on December 5, 2013, and the effective date of the Notice is **December 15, 2013**, in accordance with section 46 of the Act. The Tenant did not pay the rent and did not dispute the Notice, therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed the total unpaid rent of \$2,880.00 which was due December 1, 2013. The Tenant failed to pay rent in accordance with the tenancy agreement which is a breach of section 26 of the Act. Accordingly, I award the Landlord a Monetary Award for unpaid rent of **\$2,880.00**.

As noted above this tenancy ended **December 15, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for January and February 2014, not rent. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and they will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire months of January and February 2014, in the amount of **\$1,600.00** (2 x \$800.00).

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid rent up to December 2013	\$2,880.00
Use & Occupancy & Loss of Rent (Jan. & Feb)	1,600.00
Filing Fee	<u>50.00</u>
<u>SUBTOTAL</u>	\$4,530.00
LESS: Payments made January 18 th & 31, 2014	<u>-850.00</u>
<u>SUBTOTAL</u>	\$3,680.00
LESS: Security Deposit \$400.00 + Interest 0.00	<u>-400.00</u>
Offset amount due to the Landlord	<u>\$3,280.00</u>

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$3,280.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be 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: February 07, 2014

Residential Tenancy Branch

