



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bourbon Hotel
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

Is 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 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:15 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The male landlord (the landlord) testified that he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on January 2, 2014. The female landlord gave sworn testimony that she witnessed the landlord post the 10 Day Notice on the tenant's door on January 2, 2014. The landlord gave sworn testimony, confirmed by the female landlord, that he handed the tenant a copy of the landlord's dispute resolution hearing package on January 17, 2014. I am satisfied that the landlord served these documents to the tenant in accordance with the *Act*.

At the commencement of this hearing, the landlord testified that on January 22, 2014, the landlord had accepted and cashed a cheque from the Ministry of Social Development and Social Innovation (the Ministry) in the amount of \$525.00. The landlord reduced the amount of his monetary claim by the \$525.00 received from the Ministry on January 22, 2014. The landlord testified that when he gave the tenant the receipt for this cheque, the tenant agreed that the landlord's acceptance of this payment for outstanding rent only enabled the tenant to remain in the rental unit until February 1, 2014, by which time the tenant agreed to have vacated the rental unit. He said that the tenant has not vacated the rental unit as promised.

The landlord also testified that he had received a subsequent cheque from the Ministry for another \$525.00, which he intended to return to the Ministry.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy for a room in a single room occupancy hotel began on October 18, 2012. Monthly rent according to the copy of the Residential Tenancy Agreement (the Agreement) entered into written evidence by the landlord was initially set at \$525.00, payable on the first of each month. The landlord continues to hold the tenant's \$262.50 security deposit paid on October 18, 2012.

At the hearing, the landlord asserted that the current rent was set at \$544.85, as a result of a legal Notice of Rent Increase issued to the tenant. The landlord provided no copy of this Notice.

The landlord's original application was for a monetary award of \$584.85 and the issuance of an Order of Possession based on the 10 Day Notice.

Analysis

Based on the undisputed sworn testimony of the landlord, I find that the landlord's acceptance of the January 22, 2014 cheque of \$525.00 did not reinstate this tenancy. I accept the landlord's testimony that the tenant fully understood that he was being allowed to remain in the rental unit only until February 1, 2014, by which time he had agreed to vacate the premises.

The tenant failed to pay the January 2014 rent in full within five days of being deemed to have received the 10 Day Notice January 5, 2014. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have received 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 January 15, 2014. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. 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 within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I find that for the purposes of the landlord's application for a monetary award for unpaid rent the landlord has only demonstrated entitlement to monthly rent of \$525.00, the amount stated in the Agreement. The landlord did not provide written evidence of the Notice of Rent Increase. As such, I find that the landlord's acceptance of \$525.00 from the Ministry on the tenant's behalf satisfied the tenant's rental obligations for January 2014.

The only monetary award I issue is the landlord's claim for the recovery of the \$50.00 filing fee from the tenant. In accordance with the set-off provisions of section 72 of the *Act*, I allow the landlord to retain \$50.00 from the tenant's security deposit to implement this portion of my decision.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary award in the landlord's favour in the amount of \$50.00 to recover the filing fee for the landlord's application. To implement this award, I order the landlord to retain \$50.00 from the tenant's security deposit. The revised value of the tenant's security deposit is reduced from \$262.50 to \$212.50.

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 13, 2014

Residential Tenancy Branch

