



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MND, FF, ET

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord.

The landlord provided documentary evidence confirming the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on February 3, 2014 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenant on the 5th day after it was mailed.

Based on the evidence of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Section 56 of the *Act* allows a landlord to request an order of possession to end the tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under Section 47 (1 Month Notice to End Tenancy for Cause) if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - iii. Put the landlord's property at significant risk;
 - iv. engaged in illegal activity that
 - a) Has caused or is likely to cause damage to the landlord's property,
 - b) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - c) Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

- v. caused extraordinary damage to the rental unit or residential property;
- b) And it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under Section 47 to take effect.

As the landlord has applied for an early end to tenancy under Section 56 but all of their evidence relates to an unpaid rent I amend their Application to exclude the matter of ending the tenancy early and without notice.

As the landlord has applied to obtain an order of possession and the tenancy has not yet ended I find the landlord's Application for compensation for damage to the rental unit is premature as the tenant has until the end of the tenancy to complete any repairs before the landlord can claim any loss. I therefore amend the landlord's Application to exclude the matter of damage to the rental property.

As the landlord has not indicated a value for the monetary order sought I find it is prejudicial to the tenant to proceed with any monetary claim at all against the tenant. I amend the landlord's Application to exclude any monetary orders.

Issue(s) to be Decided

The issue to be decided is whether the landlord is entitled to an order of possession for unpaid rent and to recover the filing fee from the tenant for this Application, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on October 5, 2013 for a month to month tenancy beginning on October 5, 2013 for the monthly rent of \$1,200.00 due on the 1st of each month and a security deposit of \$600.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on February 3, 2014 with an effective vacancy date of February 17, 2014 due to \$1,200.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the months of January and February 2014 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it in the mailbox of the rental unit on February 3, 2014.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on February 6, 2014 and the effective date of the notice was February 17, 2014. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find 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.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the landlord for this application. I order the landlord may deduct this amount from the security deposit held in the amount of \$600.00 in satisfaction of this claim.

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: March 20, 2014

Residential Tenancy Branch

