



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gramercy Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPB / OPR, MNR, FF

Introduction

This hearing was scheduled in response to the landlord's application for an order of possession, a monetary order as compensation for unpaid rent, and recovery of the filing fee. The landlord's agent attended and gave affirmed testimony.

The landlord's agent testified that the application for dispute resolution and notice of hearing (the "hearing package") was served in-person on March 13, 2014. Despite this, the tenant did not appear. The landlord's agent also testified that the tenant vacated the unit on March 31, 2014, and did not provide a forwarding address. In the result, the landlord's agent withdrew the application for an order of possession.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the fixed term of tenancy is from January 01, 2014 to December 31, 2014. Monthly rent of \$1,850.00 is due and payable in advance on the first day of each month, and a security deposit of \$925.00 was collected. The landlord's agent testified that a move-in condition inspection report was completed.

Arising from rent which was unpaid when due on February 01, 2014, pursuant to section 46 of the Act which addresses **Landlord's notice: non payment of rent**, the landlord issued a 10 day notice to end tenancy dated February 05, 2014. The notice was served in-person on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is February 15, 2014. Subsequently, the tenant's cheque payment for rent was NSF, and no further payments

were made toward rent before the tenant vacated the unit on March 31, 2014. The landlord's agent testified that a move-out condition inspection report was completed.

Pursuant to section 47 of the Act which speaks to **Landlord's notice: cause**, the landlord issued a 1 month notice to end tenancy dated February 26, 2014, and served it in-person on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is March 31, 2014. The reason identified on the notice in support of its issuance is as follows:

Tenant has allowed an unreasonable number of occupants in the unit / site

The landlord filed an application for dispute resolution on March 11, 2014. Despite on-line advertising, new renters have not yet been found for the unit.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord's agent, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated February 05, 2014. The tenant did not pay the full amount of outstanding rent within 5 days of receiving the notice, and did not apply to dispute the notice before vacating on March 31, 2014 without providing a forwarding address.

In view of the foregoing, I find there is no need for me to consider circumstances surrounding the landlord's issuance of the 1 month notice to end tenancy for cause.

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Following from the above, I find that the tenant failed to pay rent pursuant to the terms of the tenancy agreement, and ended the fixed term tenancy prior to the date specified in the tenancy agreement as the end of tenancy. I also find that the landlord undertook to mitigate the loss of rental income by advertising for new renters in a timely manner. As for compensation, I find that the landlord has established a claim of **\$5,600.00**:

\$1,850.00: *unpaid rent for February*

\$1,850.00: *unpaid rent for March*

\$1,850.00: *unpaid rent / loss of rental income for April*

\$50.00: *filing fee*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**, in part:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

I order that the landlord retain the security deposit of **\$925.00**, and I grant the landlord a **monetary order** for the balance owed of **\$4,675.00** (\$5,600.00 - \$925.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$4,675.00**. This order may be served on the tenant, 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: April 30, 2014

Residential Tenancy Branch

