



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Estates Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38;
4. A Monetary Order for compensation – Section 67; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy began on September 26, 2013. Rent of \$1,020.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected \$510.00 as a security deposit from the Tenant. The tenancy agreement provides for a \$25.00 late charge. The Tenant failed to pay rent for March 2013 and on March 7, 2013 the Landlord served the Tenant with a 10 day notice

to end tenancy for unpaid rent (the "Notice") by posting the Notice on the door. The Tenant does not recall the date that the Tenant found the Notice. On March 17, 2013 the Tenant paid \$425.00 towards the rent and the Landlord provided the Tenant with a receipt marked "for use and occupancy only". On April 7, 2014 the Tenant paid \$1,000.00 and the Landlord provided the Tenant with a receipt marked "for use and occupancy only". On today's date the Tenant paid another \$1,000.00 and the Landlord has a receipt waiting for the Tenant marked "for use and occupancy only". The Tenant believed that a payment for \$650.00 was made to the Landlord on March 14, 2014 and the Landlord states that no such funds were received.

The Landlord claims unpaid rent of \$635.00 and \$75.00 for late charges. The Landlord agrees to an order of possession effective May 31, 2014.

Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent (the "Notice") the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Section 55 of the Act provides that a landlord may request an order of possession of a rental unit by making an application for dispute resolution where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the Notice by making an application for dispute resolution and the time for making that application has expired.

Based on the undisputed evidence I find that the Tenant was given a valid Notice, deemed to have been received on March 7, 2014. The Tenant has not filed an application to dispute the Notice and did not pay the full amount of rent owed within 5 days receipt of the Notice. Given these facts, I find that the Landlord is entitled to an **Order of Possession effective 1:00 p.m. on May 31, 2014**. Although the Tenant claims that all rents are paid to date, given the lack of supporting evidence, such as a bank statement or transaction record, I also find that the Landlord has established a

monetary claim for **\$635.00** in unpaid rent and **\$75.00** in late fees. The Landlord is entitled to recovery of the **\$50.00** filing fee for a total monetary amount of **\$760.00**. Setting the security deposit of \$510.00 plus zero interest off the entitlement leaves **\$250.00** owed by the Tenant to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **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.

I order that the Landlord retain the **deposit** and interest of \$510.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$250.00**. If necessary, 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: May 08, 2014

Residential Tenancy Branch

