



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OPR, MNR

Introduction

This non-participatory matter was conducted by way of a direct request proceeding, pursuant to section 55(4) of the Residential Tenancy Act (the "Act"), and dealt with an application for dispute resolution by the landlord for an order of possession for the rental unit due to unpaid rent and for a monetary order for unpaid rent, pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice").

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 16, 2014, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Act states that the tenant was deemed served on May 21, 2014.

Based on the written submissions of the landlord, I find that the tenant has been duly served with the Direct Request Proceeding documents.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent and for a monetary order for unpaid rent?

Background and Evidence

The landlord submitted the following additional evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on October 22, 2013, for the monthly rent of \$850, due on the first day of the month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was dated April 2, 2014, with an effective vacancy date of April 12, 2014, listing unpaid rent of \$1275 as of April 1, 2014;

- Written Proof of Service that the tenant was served the Notice by attaching it to the tenant's door on April 2, 2014; and
- Accounting/Receipt information showing that the tenant paid some rent for April 2014.

The Notice stated that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

The application of the landlord indicated that the tenant was deficient in rent in the amount of \$1275, \$400 owing for April and \$850 for May 2013. The landlord further claimed for a late fee of \$25, which is not allowed in a direct request proceeding, as the matter is for issues involving unpaid rent only.

I have no evidence before me that the tenant paid the rent listed or filed an application for dispute resolution to dispute the Notice.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with a notice to end tenancy as declared by the landlord.

I accept the evidence before me that the tenant failed to pay the rent listed within the 5 days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice.

Based on the foregoing, I find that 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. Therefore, I find that the landlord is entitled to an order of possession for the rental unit.

As to the landlord's request for a monetary order, while I accept that some rent was owed when the 10 Day Notice was issued, I find the landlord submitted unclear evidence to establish the actual amount owed. For instance, the amount of rent listed on the 10 Day Notice was \$1275; yet the application of the landlord stated that the unpaid rent owing for April was \$400.

This amount is contradictory to the landlord's documentary evidence, as that evidence shows a payment of \$450 and \$85, for a total of \$535, which would leave a rent deficiency of \$315, not \$400 as listed on the landlord's application. The evidence does not support that the tenant owed a rent deficiency of \$1275 as of April 1, 2014.

Additionally, the landlord claimed for sums allegedly owed for May, which was not an issue listed on the 10 Day Notice.

Due to the above, I find that the landlord has not submitted sufficiently clear evidence to support the amount of their monetary claim.

I therefore find that the portion of the landlord's application for a monetary order does not meet the requirements for the Direct Request process, which is based upon written submissions only.

Conclusion

I grant the landlord an order of possession for the rental unit effective two days after service on the tenant, which is enclosed with the landlord's Decision. This order is a legally binding, final order, and may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court should the tenant fail to comply with the terms of the order of possession. The tenant is advised that costs of such enforcement may be recovered from the tenant.

The portion of the landlord's application for a monetary order is dismissed, with leave to re-apply.

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* and is being mailed to both the applicant and the respondent.

Dated: June 05, 2014

Residential Tenancy Branch

