



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on April 23, 2014 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail to the address noted on the Application. The mail was returned by Canada Post, marked as unclaimed. The landlord said the tenant continues to reside in the rental unit.

Refusal to claim registered mail does not allow a party to avoid service. Therefore, I find that these documents are deemed to have been served on the 5th day after mailing, in accordance with section 89 and 90 of the Act. However the tenant did not appear at the hearing.

Preliminary Matters

At the start of the hearing the landlord was asked to identify the documents that he had in his possession. The landlord had a copy of the 10 day Notice to end tenancy and the tenancy agreement. The documents were reviewed and the landlord was asked to submit a copy of the documents.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order?

May the landlord retain the security deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on December 1, 2013. Rent is \$1,500.00 due on the 1st day of each month. The tenancy originally required payment of \$1,600.00; a security deposit in the sum of \$800.00 was paid. The rent was then reduced to \$1,500.00.

The landlord stated that on April 10, 2014 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of April 20, 2014, was personally given to the tenant, at the rental unit address. Service occurred at 2:34 p.m.; with a witness present. The witness, D.W., is a contractor who worked for the landlord. There was also an individual present with the tenant.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,500.00 April rent and \$540.68 for utilities within 5 days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within 5 days.

The landlord claimed compensation for unpaid April 2014 rent, plus utility costs in the sum of \$540.68. No verification of utility costs was supplied as evidence or served to the tenant.

The landlord requested compensation for May and June 2014 rent, as the tenant has not paid rent since March 2014.

Analysis

Section 90 of the Act stipulates that a document given personally is deemed served on the day of personal delivery. Therefore, I find that the tenant received the Notice to end tenancy on April 10, 2014.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on April 10, 2014, I find that the earliest effective date of the Notice is April 20, 2014.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on April 20, 2014, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no

evidence that the tenant exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; April 20, 2014.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$1,500.00 for April 2014, and that the landlord is entitled to compensation in that amount.

I have considered the landlord's request for May and June 2014 rent and have determined that an amendment of the application will not breach the principles of natural justice or prejudice the tenant. Rent is the most basic term of a tenancy agreement and the tenant would be well aware that rent must be paid.

Therefore, in the absence of the tenant, who refused to claim the notice of hearing sent by registered mail, I find that the landlord is entitled to compensation for unpaid May and June 2014 rent in the sum of \$3,000.00.

In the absence of evidence verifying the utility claim I find that sum is dismissed.

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the \$800.00 security deposit in partial satisfaction of the claim.

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Therefore, the landlord has established a monetary claim, in the amount of \$4,550.00, which is comprised of \$4,500.00 in unpaid rent for April, May and June 2014, inclusive and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order for the balance of \$3,750.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to an Order of possession and monetary Order for unpaid rent.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

The claim for utility costs is dismissed.

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: June 11, 2014

Residential Tenancy Branch

