



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Baywest Management Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, 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. A Monetary Order for compensation – Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

During the Hearing the Landlord stated that the application and notice of dispute resolution were amended by the Landlord to add a party and to increase the amount being claimed. This was done solely by writing the details on the original application and notice of hearing letter and sending this altered application and hearing letter to the Tenants in an evidence package. Rule 2.11 of the Resident Tenancy Branch Rules of Procedure provides that an amended application must be provided separately from all other documents. As the altered application was not provided separately from the

original application and the RTB did not accept any amendment from the Landlord in relation to the alterations, I therefore decline to accept the alterations as an amendment.

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 tenancy began on July 1, 2013. Rent of \$745.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected \$372.50.00 as a security deposit from the Tenant. The Tenant failed to pay rent for May 2014 and on May 6, 2014 the Landlord personally served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice"). The Tenant has not made an application for dispute resolution and has not moved out of the unit. Since receiving the Notice the Tenant paid a total of \$850.00 to the Landlord towards rents owing and the Landlord provided receipts for "use and occupancy only" on these monies. The Landlord claims unpaid rent to and including July 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 Landlord's evidence I find that the Tenant was given a valid Notice. The Tenant has not filed an application to dispute the Notice and has not moved out of the unit. Given these facts, I find that the Landlord is entitled to an **Order of Possession**. Considering that the Landlord has been provided an order of possession with a 2 day effective period, I also find that the Landlord has established a monetary claim for **\$1,012.50** in unpaid rent to July 15, 2014. The Landlord has leave to reapply for additional rent if the Tenant remains in the unit past this date. The Landlord is entitled to recovery of the \$50.00 filing fee for a total monetary amount of **\$1,062.50**. Deducting the security deposit of \$372.50 plus zero interest leaves **\$690.00** 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 \$372.50 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$690.00**. 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: July 07, 2014

Residential Tenancy Branch

