



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, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent.

The landlord testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on July 3, 2014 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenant on the 5th day after it was mailed.

Based on the testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord testified the tenancy began on November 1, 2013 as a month to month tenancy for a monthly rent of \$1,600.00 due on the 1st of each month with a security deposit of \$800.00 paid. The landlord also testified that the rent was reduced in January 2014 to \$1,500.00.

The landlord submitted into evidence the following documents:

- A 10 Day Notice to End Tenancy issued on June 19, 2014 with an effective vacancy date of June 30, 2014 citing the tenant failed to pay rent in the amount of \$1,500.00 due on April 1, 2014;
- A 10 Day Notice to End Tenancy issued on June 19, 2014 with an effective vacancy date of June 30, 2014 citing the tenant failed to pay rent in the amount of \$1,500.00 due on May1, 2014; and
- A 10 Day Notice to End Tenancy issued on June 19, 2014 with an effective vacancy date of June 30, 2014 citing the tenant failed to pay rent in the amount of \$1,500.00 due on June 1, 2014.

The landlord submitted also into evidence a Proof of Service document that stipulates the three Notices to End Tenancy were served to the tenant's brother on June 19, 2014 at 12:27 p.m. The service was witness by a third party who signed the Proof of Service document to indicate so. The landlord testified that the tenant's brother was living with him and he thought the brother was in his 20's.

The landlord submits that after issuing the three notices on June 19, 2014 he has still not received any payment from the tenant for those months nor the months since (July and August 2014).

The Notices all indicated that the tenant could pay the rent in full or file an Application for Dispute Resolution to seek to cancel the Notices within 5 days of receipt of the Notices. There is no evidence before me that the tenant paid any rent or that he filed an Application for Dispute Resolution seeking to cancel any of these Notices.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

And Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

I have reviewed all documentary evidence and testimony and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on June 19, 2014 and the effective date of the notice was June 30, 2014. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find 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.

I also find, based on the landlord's undisputed testimony that the tenant has failed to pay rent in the amount of \$7,500.00 to the landlord.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$7,550.00** comprised of \$7,500.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: August 28, 2014

Residential Tenancy Branch

