



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding S.U.C.C.E.S.S.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR

Introduction

This was a reconvened hearing which dealt with an Application for Dispute Resolution filed on June 5, 2014, by the Landlord seeking an Order of Possession and a Monetary Order for unpaid rent. The Landlord originally applied through the direct request process which, upon review, was scheduled for a conference call hearing in accordance with section 74 of the *Residential Tenancy Act*.

The Landlord was represented by two employees, E.H. and E.K. Therefore, for the remainder of this decision, terms or references to the Landlord importing the singular shall include the plural and vice versa.

The Landlords affirmed that service of my Interim Decision and the Notice of Reconvened hearing documents was done in person to the Tenant on July 3, 2014.

The Landlords appeared at the scheduled teleconference hearing, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written form. The Tenant did not attend the hearing despite being personally served the hearing documents in accordance with section 89 of the Act. The Landlord submitted additional evidence which was personally served upon the Tenant on August 20, 2014, after the Tenant delayed in meeting with the Landlord. Accordingly, I accepted the evidence before me and proceeded in absence of the Tenant.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted evidence that the parties executed a written tenancy agreement for a month to month subsidized tenancy that commenced on September 1, 2009.

Market value rent as listed on the tenancy agreement was \$900.00 and on or before September 1, 2009, the Tenant paid \$450.00 as the security deposit.

The Landlord testified that at the Tenant's subsidized rent amount was \$510.00 and was payable on the first of each month. When the Tenant failed to pay the full amount for March 2014 rent a 10 Day Notice was posted to the Tenant's door on May 5, 2014 for the outstanding amount of \$135.00. The Landlords submitted that the Tenant did not dispute the Notice and did not pay the \$135.00 owed within the required five day period.

The Landlords clarified that the Tenant began to have his rent paid by Income Assistance and that sometime around the end of May they received payment from Income Assistance for June rent of \$510.00 and that they accepted this payment for "use and occupancy". Then on June 13, 2014 they accepted payment from the Tenant for the outstanding \$135.00, for which they issued the Tenant a receipt for "use and occupancy".

The Landlords indicated that they have received payment of \$510.00 for July and August occupancy from Income Assistance; however, the Tenant has failed to provide the Landlord with the required subsidy forms so the subsidy is now in question.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on May 8, 2014, three days after it was posted to his door, and the effective date of the Notice was **May 18, 2014**, in accordance with section 90 of the Act.

The Tenant did not pay the rent and did not dispute the Notice within the required five days, therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the Act. The Landlord has since accepted payments for occupancy from Income Assistance towards June, July and August 2014. Accordingly, I approve the Landlord's request for an Order of Possession effective **August 31, 2014**.

I accept the Landlord's undisputed evidence that the \$135.00 and the subsequent payments received from Income Assistance were accepted for "use and occupancy only" and that the tenancy was not reinstated.

The Landlord claimed unpaid rent of \$135.00 which was due March 1, 2014. The Tenant has since paid the \$135.00 on June 13, 2014, which was accepted by the Landlord for use and occupancy only. Accordingly, I dismiss the Landlord's request for a monetary order for March unpaid rent, without leave to reapply.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

The Landlord has been granted an Order of Possession effective **August 31, 2014, at 1:00 p.m. after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme 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: August 22, 2014

Residential Tenancy Branch

