



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Properties Limited
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, 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. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord provided documents as an evidence package containing a copy of the application with written amendments.

Section 2.11 of the Rules provides that an amended application must be clearly identified and provided separately from all other documents. The applicant must submit the amended application to the Residential Tenancy Branch (the “RTB”). As the copy of the application was not provided separately from the evidence package to either the Tenant or the RTB, I find that the Landlord has not amended the application as required. The Landlord’s claims are therefore limited to those contained in the application.

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 following are undisputed facts: The tenancy began on December 1, 2006. Rent of \$1,134.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected \$445.00 as a security deposit from the Tenant. The Tenant failed to pay rent for September 2014 and on September 4, 2014 the Landlord served the Tenant in person with a 10 day notice to end tenancy for unpaid rent (the "Notice"). The Tenant paid the outstanding rent in full by October 21, 2014 and the Landlord issued receipts for "use and occupancy only". The Tenant did not make an application for dispute resolution.

The Landlord agrees that no rents are owed for the September 2014 rent claimed. The Landlord claims an order of possession.

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 undisputed evidence I find that the Tenant was given a valid Notice, did not file an application to dispute the Notice, and did not pay the outstanding rent within

the required time. Given these facts, I find that the Landlord is entitled to an **Order of Possession**. The Landlord is entitled to recovery of the \$50.00 filing fee and I order the Landlord to deduct this amount from the security deposit plus interest in the total amount of \$458.65 (\$445.00 plus \$13.65).

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 \$50.00 from the **deposit** and interest of \$458.65 in full satisfaction of the claim.

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: November 05, 2014

Residential Tenancy Branch

