



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wendeb Properties Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNSD

Introduction

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

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

The landlord's agent 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 February 10, 2015 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been 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 and to an order to retain all or part of the security deposit, pursuant to Sections 38, 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord's agent testified the tenancy began as a 1 year fixed term tenancy beginning on December 15, 2013 that convert to a month to month tenancy on January 1, 2015 for a monthly rent of \$800.00 due on the 1st of each month with a security deposit of \$400.00 and a pet damage deposit of \$200.00 paid.

The agent testified the tenant has failed to pay rent in the full amounts since November 1, 2014. She testified that she has received the following payments of \$550.00 for November 2014; \$350.00 for December 2014; and \$200.00 for January 2015 leaving a balance owed to the landlord of \$2,100.00. The landlord seeks only to retain the security and pet damage deposit in settlement of all outstanding rent.

The landlord has submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on January 5, 2015 with an effective vacancy date of January 19, 2015 due to \$2,075.00 in unpaid rent. The landlord's agent testified the notice was served to the tenant by posting in on the rental unit door on January 5, 2015 and that this service was witnessed by a third party.

Analysis

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

Section 46(4) allows the tenant to either pay the rent or file an Application for Dispute Resolution to dispute the notice within 5 days of receipt of the notice.

Section 46(5) states that if a tenant who has received a notice under this section does not pay the rent or make an Application for Dispute Resolution to dispute the notice within the allowed 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.

Based on the undisputed testimony and evidence provided by the landlord's agent I find the tenant was served with the 10 Day Notice to End Tenancy on January 5, 2015 and that the tenant is deemed to have received the Notice on January 8, 2015, pursuant to Section 90 of the *Act*.

I further find that the tenant had until February 13, 2015 to either pay the rent in full or file an Application for Dispute Resolution seeking to cancel the Notice. As the tenant has failed to do either I find the tenant is conclusively presumed to have accepted that the tenancy has ended and must vacate the rental unit.

I accept the landlord has established a debt of rent owed to exceed the amounts held for both the security deposit and pet damage deposit. As such, and pursuant to Section

72(2)(b) I order the landlord may retain these deposits in the amount of \$600.00 in full satisfaction of unpaid rent owed.

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.

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: February 27, 2015

Residential Tenancy Branch

