



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KIKI & PUA HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to section 55; and
- a monetary order for unpaid rent, pursuant to section 67.

The tenant did not attend the hearing, which lasted approximately 19 minutes. The landlord's agent, JM ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that he is the director for the landlord company named in this application and that he had authority to appear as an agent at this hearing.

Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. An "interim decision," dated February 26, 2015, was issued by an adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing. The interim decision found that service of the landlord's notice of direct request proceeding ("direct request application") could not be confirmed because the landlord's name and address appeared on the Canada Post receipt, rather than the tenant's name and address. At the hearing, the landlord testified that the employee at Canada Post mistakenly recorded the landlord's information rather than the tenant's information on the receipt. The landlord testified that the tenant was served with the landlord's direct request application on February 21, 2015 by way of registered mail. The landlord indicated that the tenant did not retrieve the direct request application and it was sent back to the landlord.

The landlord testified that the tenant was served with the interim decision, notice of this reconvened hearing and the landlord's amended application for dispute resolution

("Application") on March 7, 2015, by way of registered mail. The landlord provided a Canada Post receipt and tracking number as proof of service with the landlord's Application. In accordance with sections 89 and 90 of the Act, I find that the tenant was deemed served with the landlord's Application on March 12, 2015, the fifth day after its registered mailing.

The landlord testified that he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, dated February 11, 2015 ("10 Day Notice"), by posting it to the tenant's rental unit door on the same date. The landlord provided a signed and witnessed proof of service form, with the landlord's Application. In accordance with sections 88 and 90 of the Act, I find that the tenant was deemed served with the landlord's 10 Day Notice on February 14, 2015, three days after its posting.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

The landlord testified that this fixed term tenancy began on November 1, 2013 for one year, after which it transitioned to a month to month tenancy. Monthly rent in the amount of \$2,500.00 is payable on the first day of each month. A security deposit of \$1,250.00 was paid by the tenant on October 16, 2013 and the landlord continues to retain this deposit. The landlord provided a copy of the tenancy agreement with the landlord's Application. The landlord testified that 10 days prior to this hearing, the tenant was still residing in the rental unit. The landlord testified that he requires an order of possession because he believes the tenant is still residing in the rental unit.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$5,085.00 was due on February 1, 2015. The landlord stated that this amount included \$85.00 for December 2014 rent and \$2,500.00 for each of January and February 2015 rent. The notice indicates an effective move-out date of February 24, 2015. The landlord confirmed that no rent payments have been made by the tenant since the 10 Day Notice was served. The landlord seeks to recover rent of \$10,085.00 from the tenant. This includes \$85.00 for December 2014 rent and \$2,500.00 for each month from January to April 2015.

The landlord is also seeking to recover the \$50.00 filing fee for this Application from the tenant.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on February 1, 2015, within five days of being deemed to have received the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on February 24, 2015, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by February 24, 2015. As this has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

The landlord provided undisputed evidence that the tenant failed to pay \$85.00 for December 2014 rent and \$2,500.00 for rent from January to March 2015. Therefore, I find that the landlord is entitled to \$7,585.00 in rental arrears for the above period.

The landlord seeks to recover unpaid rent of \$2,500.00 for April 2015. However, the landlord's application is premature, as this rent is not due until April 1, 2015, a date which had not yet occurred at the time of this hearing. Therefore, the landlord's application for a monetary order for unpaid April 2015 rent is dismissed with leave to reapply.

The landlord continues to hold the tenant's security deposit of \$1,250.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$6,335.00 against the tenant as follows:

Item	Amount
Unpaid December 2015 Rent	\$85.00
Unpaid January 2015 Rent	2,500.00
Unpaid February 2015 Rent	2,500.00
Unpaid March 2015 Rent	2,500.00
Less Security Deposit	-1,250.00
Total Monetary Award	\$6,335.00

The landlord is provided with a monetary order in the amount of \$6,335.00 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's application for a monetary order for unpaid April 2015 rent is dismissed with leave to reapply.

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: March 31, 2015

Residential Tenancy Branch

