



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRIAGORA INVESTMENT CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to keep the Tenant's security deposit and to recover the filing fee from the Tenant.

An agent for the Landlord (the "Landlord") appeared for the hearing and gave affirmed testimony and provided the notice to end tenancy prior to the hearing. There was no appearance by the Tenant during the 20 minute duration of the hearing or any submission of written evidence prior to the hearing. As a result, I turned my mind to the service of the documents for this hearing by the Landlord.

The Landlord testified that he personally served the Tenant with a copy of the Application and the Notice of Hearing documents on March 24, 2015. Based on the undisputed evidence of the Landlord, I find the Tenant was served with the required documents pursuant to Section 89(1) (a) of the *Residential Tenancy Act* (the "Act").

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim?

Background and Evidence

The Landlord testified that this tenancy started on February 1, 2015 on a month to month basis. Rent is payable by the Tenant in the amount of \$750.00 on the first day of

each month. The Tenant paid the Landlord a \$375.00 security deposit on the last week of January 2015, which the Landlord still retains.

The Landlord testified that the Tenant failed to pay rent on March 1, 2015. As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on March 2, 2015 by posting it to the Tenant's door with a witness. The Notice shows an expected date of vacancy of March 12, 2015 due to \$750.00 in unpaid rent due on March 1, 2015.

The Landlord testified that the Tenant applied to a government agency to have assistance in paying rent. As a result, the Landlord received two payments of \$570.00 each from the government agency relating to April and May 2015 rent for a total amount of \$1,140.00. The Landlord testified that the Tenant did not pay anything for March 2015 rent and now also owes for partial unpaid amounts relating to April and May 2015 rent.

The Landlord explained that when the payments were made to him by the government agency for April and May 2015 rent, he applied these amounts to unpaid rent for March 2015 and the Tenant still owes him for the partial amounts for April and May 2015. The Landlord testified that he had informed the Tenant that because there were still rental arrears and he had accepted the partial payments, this was not going to re-instate that the tenancy and that he was still moving forward with his Application.

The Landlord testified that for the months of March, April and May 2015, the Tenant is in total rental arrears for the amount of \$1,110.00 (\$750.00 for March, \$180.00 for April and \$180.00 for May) which he now seeks to claim.

Analysis

Having examined the Notice, I find that the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlord's undisputed evidence that the Notice was served to the Tenant by attaching it to the rental unit door on March 2, 2015, in the presence of a witness.

Section 90(c) of the Act provides that a document served by attaching it to the door is deemed to have been received three days after being attached. Therefore, I find that the Tenant was deemed to have received the Notice on March 5, 2015. As a result, the effective vacancy date on the Notice is corrected to March 15, 2015 pursuant to Section 53 of the Act.

Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

I accept the Landlord's evidence that the Tenant failed to pay rent in the five day time period the Tenant had after being served with the Notice. There is no evidence before me that the Tenant made an Application to dispute the Notice either.

Therefore, I find the Tenant is conclusively presumed to have accepted that the tenancy ended on the corrected vacancy date of the Notice. As this date has now passed and the Tenant is still in rental arrears, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenant. This order may then be filed for enforcement in the Supreme Court of British Columbia as an order of that court.

In relation to the Landlord's monetary claim for unpaid rent, I make the following findings. As the Landlord has been issued with an Order of Possession to end the tenancy and it is still early in the month, I have only considered the Landlord's claim for unpaid rent from March 1, 2015 to May 15, 2015. If the Landlord is not able to re-rent the unit after May 15, 2015, the Landlord is at liberty to re-apply for any subsequent rental loss.

I find that for the period of March 1, 2015 to May 15, 2015, the Tenant is liable for total rent in the amount of \$1,875.00 (\$750.00 for March, \$750.00 for April, and \$375.00 half of May rent). I accept the Landlord's evidence that for this period of time the Tenant has only made a total payment of \$1,140.00 (\$570.00 + \$570.00). Therefore the outstanding balance awarded to the Landlord is **\$735.00** (\$1,875.00 - \$1,140.00).

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$50.00** Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$785.00** (\$735.00 + \$50.00).

As the Landlord already holds the Tenant's \$375.00 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is awarded a Monetary Order for the outstanding balance of **\$410.00** (\$785.00 - \$375.00). This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court. Copies of the above orders for service and enforcement are attached to the Landlord's copy of this decision.

Conclusion

The Tenant has failed to pay rent. As a result, the Landlord is granted an Order of Possession effective **two days after service on the Tenant**. The Landlord is allowed to keep the Tenant's security deposit and is granted a Monetary Order for the outstanding amount of **\$410.00**. The Landlord is at liberty to re-apply for any rental losses incurred after May 15, 2015.

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: May 04, 2015

Residential Tenancy Branch

