



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Top Producers Realty Ltd. PM Division
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

As rent is the most basic term of a tenancy the application has been amended to include unpaid rent and loss of rent revenue from the effective date of the Notice.

The parties each had a copy of the tenancy agreement a 10 day Notice to end tenancy for unpaid rent. This evidence was not before me. The parties agreed on the content of the documents, which were reviewed during the hearing.

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?

May the landlord retain the security deposit paid by the tenant?

Background and Evidence

The tenancy commenced on October 15, 2013. A security deposit in the sum of \$375.00 and a pet deposit in the sum of \$100.00 were paid. Rent is \$750.00 due on the first day of each month.

The landlord and tenant agreed that on March 7, 2015 a 10 day Notice to end tenancy was issued. The Notice was posted to the tenant's door on March 9, 2015. The tenant confirmed receipt of the Notice sometime in early March, 2015. The Notice had an effective date of March 17, 2015.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,250.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant confirmed that he has not paid \$500.00 owed in February 2015 and that no rent has been paid since that time. The tenant continues to occupy the rental unit.

There was no dispute that the landlord is owed rent from February 2015 in the sums claimed by the landlord.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the 3rd day after it is posted. Therefore, I find that the tenant received the Notice to end tenancy on March 12, 2015.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on March 12, 2015, I find that the earliest effective date of the Notice is March 22, 2015.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was March 22, 2015.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on March 22, 2015, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; March 22, 2015.

In the absence of evidence to the contrary, I find that the tenant has not paid rent to March 22, 2015 and loss of rent revenue on a per diem basis from March 23 to May 11, 2015. The landlord is entitled to total compensation in the sum of \$2,271.26 (unpaid rent to March 22, 2015 and loss of rent revenue to May 11, 2015.)

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the security and pet deposit in the sum of \$475.00 in partial satisfaction of the claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,846.26. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The landlord has been granted an Order of possession that is effective two days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The landlord is entitled to an Order of possession and monetary Order for unpaid rent and loss of rent revenue.

The landlord may retain the security and pet deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 11, 2015

Residential Tenancy Branch