



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRISTOL ESTATES
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
4. An Order to recover the filing fee for this application - Section 72.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Both parties confirmed / testified that on the previous day, May 26, 2015, the tenant satisfied all rent currently owed to the landlord inclusive of May 2015 rent. The landlord testified they were amending their application seeking solely an Order of Possession.

Issue(s) to be Decided

Is the notice to end tenancy valid?
Is the landlord entitled to an Order of Possession?

Background and Evidence

The tenancy began on August 01, 2014. Rent in the amount of \$950.00 is payable in advance on the first day of each month. The tenant failed to pay all rent owed in the month of April 2015 and on April 02, 2015 the landlord served the tenant with a notice to end tenancy for non-payment of rent by attaching it to the tenant's door, stating that on April 01, 2015 the tenant owed \$350.00. The landlord provided a Proof of Service form confirming the Notice to End was served along with a witness for the landlord. The

tenant did not satisfy the arrears of rent within the 5 days permitted to do so, and as stated on the 10 Day Notice to End Tenancy, and further did not file to dispute the Notice. The parties each confirmed the tenant satisfied all rent for April 2015 on May 01, 2015, along with a portion of May 2015 rent. The landlord testified they issued receipts stating they accepted the tenant's payments for 'Use and Occupancy Only'. The tenant testified the receipts they received stated the words "for use and occupancy only". The landlord requested an Order of Possession.

Analysis

Based on the evidence of both parties I find that the tenant was served with a Notice to End tenancy for non-payment of rent and I find the notice to be valid. The Act deems the tenant to have received the Notice to End 3 days after it was posted on the tenant's door – April 05, 2015. The tenant did not pay the outstanding rent within the 5 days stated on the Notice to End – that is, by April 10, 2015, and within the same period did not apply for Dispute Resolution to dispute the notice and is therefore conclusively presumed by Section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice – which in this matter was April 15, 2015. I find that the landlord subsequently accepted the arrears of rent for "use and occupancy only" and therefore did not reinstate the tenancy by accepting the arrears. Based on the above facts I find that the landlord is entitled to an Order of Possession.

As the landlord has accepted rent to the end of May 2015. The Order of Possession will not be effective until May 31, 2015.

Conclusion

I grant an Order of Possession to the landlord effective May 31, 2015. 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.

This Decision is final and binding on both parties.

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 27, 2015

Residential Tenancy Branch