



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Red Door Housing Society
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 pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67;

The landlord attended the hearing by conference call and gave affirmed and undisputed testimony. The tenant did not appear. The landlord was given full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was personally served to the tenant on May 21, 2015. Based on this undisputed affirmed testimony, I accept that the tenant was duly served with the 10 Day Notice on May 21, 2015, in accordance with section 88 of the *Act*.

The landlord gave affirmed testimony that the tenant was served with the Application for Dispute Resolution hearing package and the documentary evidence package on June 12, 2015 by Canada Post Registered Mail. The landlord provided the Customer Receipt Tracking number as confirmation of service. An online search of the Canada Post website shows that the package was sent on June 11, 2015 and received and signed for by the tenant on June 12, 2015.

In accordance with sections 89 and 90 of the *Act*, I find that the Application for Dispute Resolution hearing package was deemed served to the tenant on June 16, 2015, five days after its registered mailing.

During the hearing, the landlord had also clarified that the tenant's name was incorrectly entered and that the first and last names of the tenant were transposed on the

application. I find pursuant to section 64 that the landlord's application may be amended to properly reflect the tenant's correct name. The Residential Tenancy Branch File and Records shall be amended.

Issue(s) 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 gave affirmed and undisputed evidence that the tenant entered into a signed tenancy agreement on January 21, 2014 and took possession of the rental unit on February 1, 2014. Monthly rent for this unit is \$1,200.00, payable on the 1st of each month. The landlord testified that she continues to hold the \$600.00 security deposit that the tenant paid on February 1, 2014.

The 10 Day Notice of May 21, 2015 identified \$2,950.00 in rent owing as of that date. The landlord testified that the tenant did not pay any rent within the allowed timeframe after receiving the 10 Day Notice nor has the landlord received any notice of an application to dispute the 10 Day Notice. The landlord stated that he was only proceeding on the monetary claim applied for in the application, but that there was more rent arrears as the tenant has failed to pay rent after the notice was served.

The landlord has applied for an Order of Possession for non-payment of rent of \$2,950.00 which consists of arrears of \$550.00 for March 2015, \$1,200.00 for April 2015 and \$1,200.00 for the month of May 2015 based upon the 10 day Notice dated May 21, 2015.

The landlord testified that there has been an extended history of rent arrears by the tenant that the landlord was working to resolve with the tenant. The landlord noted during the hearing that the tenant made a late rent payment in July 2015 of \$2,000.00 for which a receipt was issued for use and occupancy only. The landlord stated that he has applied this amount to partially offset arrears for June and July of 2015. The landlord noted that he was still owed \$400.00 in rent arrears for June and July of 2015.

The landlord is seeking a monetary award of \$2,950.00 for the months of March, April and May 2015.

Analysis

Based upon the affirmed and undisputed evidence of the landlord, I find that the tenant failed to pay rent arrears of \$2,950.00 for March, April and May of 2015 within five days of receiving the 10 Day Notice to End Tenancy dated May 21, 2015. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days is conclusively presumed to have accepted that the tenancy was at an end on the effective date of the notice on June 3, 2015. The landlord's subsequent acceptance of the tenant's \$2,000.00 payment for use and occupancy only did not reinstate this tenancy. As the tenant has not vacated the rental unit, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I find that the landlord is entitled to receive a monetary order for unpaid rent. I accept this uncontested evidence offered by the landlord that the tenant failed to pay rent for March (\$550.00), April (\$1,200.00) and May (\$1,200.00) of 2015 totalling, \$2,950.00. I am issuing a monetary award for \$2,350.00 in unpaid rent. I find that the landlord accepted the partial late rent payment of \$2,000.00 in July 2015 and has applied it to the outstanding rent arrears of \$2,400.00 owed for June and July 2015 as the tenant still occupies the rental unit.

Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I am granting the landlord an Order of Possession to be effective two days after notice is served to the tenant.

I am making a monetary Order in favour of the landlord as follows:

Item	Amount
Rental Arrears for March 2015	\$550.00
Rental Arrears for April 2015	1,200.00
Rental Arrears for May 2015	1,200.00

Less Security Deposit	-600.00
Total Monetary Order	\$2,350.00

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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: August 07, 2015

Residential Tenancy Branch

