



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLARA HOLDINGS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "*Act*") to obtain an order of possession for unpaid rent, for a monetary order for unpaid rent, for authorization to keep all or part of the tenant's security deposit, and to recover the cost of the filing fee.

An agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matter

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") and Application for Dispute Resolution (the "Application") were considered. The landlord provided affirmed testimony that the Notice of Hearing and Application was served on the tenant's adult boyfriend, S.E., on August 11, 2015 at 2:30 p.m. at the rental unit. Section 89(1) of the *Act* does not permit monetary claims to be served in this manner. Therefore, the landlord's monetary claim for unpaid rent is dismissed **with leave to reapply** due to the tenant not being properly served under the *Act*. As a result, the hearing continued with the landlord's application for an order of possession only.

Issue to be Decided

- Is the landlord entitled to an order of possession for unpaid rent under the *Act*?

Background and Evidence

A month to month tenancy began on February 1, 2015. Monthly rent in the amount of \$830 was due on the first day of each month. The tenant paid a security deposit of \$415 at the start of the tenancy, which the landlord continues to hold.

The landlord confirmed service of the 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") dated June 14, 2015 via posting to the tenant's door on June 14, 2015 which was slid partially under the door and posted to the front of the door. The effective vacancy date of the 10 Day Notice is listed as June 25, 2015 and indicated that the tenant owed \$830 as of June 1, 2015. The landlord stated that the tenant did not vacate the rental unit by June 25, 2015, continues to occupy the rental unit, did not dispute the 10 Day Notice or pay the amount of \$830 owing for June 1, 2015 until July 6, 2015 which was well past the deadline provided for under section 46 of the *Act*. The landlord requested an order of possession.

Analysis

Based on the documentary evidence and the undisputed oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I accept the landlord's undisputed testimony and find that the tenant failed to pay the rent of \$830 or dispute the 10 Day Notice within 5 days after having been deemed served with the 10 Day Notice on June 17, 2015. The effective vacancy date of the 10 Day Notice automatically corrects pursuant to section 53 of the *Act* to June 27, 2015. The tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the corrected effective vacancy date of the 10 Day Notice, June 27, 2015. Accordingly, I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

As the landlord's application had merit, I **authorize** the landlord to retain **\$50** in full recovery of the filing fee from the tenant's \$415 security deposit in full satisfaction of the recovery of the filing fee. I find that the security deposit held by the landlord is now \$365.

Conclusion

The landlord's monetary claim for unpaid rent has been dismissed with leave to reapply due to a service issue.

The remainder of the landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been authorized to retain \$50 of the tenant's \$415 security deposit which results in a security deposit balance of \$365.

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: September 3, 2015

Residential Tenancy Branch

