



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOLLYBURN ESTATES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, MND, MNDC, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, a monetary Order for damage, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on February 26, 2016 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted to the Residential Tenancy Branch on February 26, 2016 were sent to the Tenant, via registered mail, at the service address noted on the Application. The Agent for the Landlord cited a tracking number that corroborates this statement. She stated that the package was returned to the Landlord after it was unclaimed by the recipient.

In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing. As they were properly served, the documents were accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession; to a monetary Order for unpaid rent, parking fees, and late fees; and to keep all or part of the security deposit?

Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began on November 01, 2014;
- the Tenant agreed to pay monthly rent of \$1,035.00 by the first day of each month;
- the tenancy agreement requires the Tenant to pay a monthly parking fee of \$25.00;

- the Tenant paid a security deposit of \$517.50;
- the Tenant did not pay any rent or parking fees for February, March, April, of 2016;
- the tenancy agreement requires the Tenant to pay “late fees” of \$25.00 if rent is paid after the 5th day of the month;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of February 19, 2016, was posted on the door of the rental unit on February 09, 2016;
- the Ten Day Notice to End Tenancy declared that the Tenant owed \$1,035.00 in rent that was due on March 01, 2016;
- the Landlord has not been served with notice that the Tenant is disputing the Notice to End Tenancy; and
- the Tenant is still occupying the rental unit.

The Landlord submitted a signed Proof of Service in which an individual declares that the Ten Day Notice to End Tenancy was posted on the Tenant’s door on February 09, 2016, in the presence of a third party who also signed the Proof of Service.

The Landlord submitted a tenancy agreement that indicates the Tenant agreed to pay monthly rent of \$1,035.00, a monthly parking fee of \$25.00, and late fees of \$25.00 if rent is paid after the 5th day of the month.

The Landlord is seeking \$3,105.00 in unpaid rent and \$75.00 in parking fees.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,035.00 by the first day of each month and that the Tenant has not paid rent for February, March or April of 2016. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act* and the Tenant is still occupying the rental unit, I find that the Tenant must pay \$3,105.00 in outstanding rent to the Landlord.

Section 46(1) of the *Act* entitles landlords to end the tenancy within ten days, by providing proper written notice, if rent is not paid when it is due. On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on February 09, 2016.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant is deemed to have received the Notice to End Tenancy on February 12, 2016.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to

have received this Notice on February 12, 2016 I find that the earliest effective date of the Notice was February 22, 2016.

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 Ten Day Notice to End Tenancy was February 22, 2016.

Section 46 of the *Act* stipulates that a Tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I grant the landlord an Order of Possession.

On the basis of the undisputed evidence I find that the Tenant agreed to pay a monthly parking fee of \$25.00, which has not been paid for February, March, and April of 2016. I therefore find that the Tenant must pay these fees, in the amount of \$75.00.

On the basis of the undisputed evidence I find that the Tenant agreed to pay a late fee of \$25.00 if rent is paid after the 5th day of any given month. As the rent has not yet been paid for February, March, and April of 2016, I find that the Tenant must pay late fees of \$75.00.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective 1:00 p.m. on April 30, 2016. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$3,355.00, which is comprised of \$3,105.00 in unpaid rent, \$75.00 in unpaid parking fees, \$75.00 in late fees, and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$517.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,837.50. In the event 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.

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: April 14, 2016

Residential Tenancy Branch