



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent issued on May 3, 2016 (the "Notice"), a Monetary Order for unpaid rent, an Order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord's representatives, D.S. and A.S. appeared at the hearing. D.S. gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

D.S. testified she served the Tenant with the Notice of Hearing and their Application on May 26, 2016 by registered mail to the rental unit. The registered mail tracking number is noted on the cover page of this my Decision. D.S. testified that to her knowledge the package had yet to be claimed by the Tenant.

Residential Tenancy Policy Guideline--12. Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and provides in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Under the *Residential Tenancy Act* documents served by registered mail are deemed served five days later; accordingly, I find the Tenant was duly served as of May 31, 2016 and I proceeded in his absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement, signed May 31, 2011, which indicated that the tenancy was between L.M.G. and the Tenant. D.S. testified that the Landlord named on the Notice and on the Landlord's Application for Dispute Resolution, A.P.M., took over management of the rental unit on February 1, 2012. D.S. testified that at the time the Tenant was provided notice of the new management company and the name of the new Landlord. She further confirmed that the Tenant has been paying rent to A.P.M. since February 2012.

The tenancy began May 31, 2011. The tenancy agreement indicates that monthly rent was originally payable in the amount of \$700.00. A security deposit in the amount of \$350.00 was paid on May 6, 2011. D.S. confirmed that the rent was subsequently reduced to \$655.00 on December 1, 2012 when the cable services were no longer provided and included in the rent. D.S. further testified that rent was then increased annually and that as of the date of issuing the Notice rent was \$694.00.

The Tenant failed to pay rent for the month of April 2016. D.S. further testified that the Tenant also did not pay rent for May 2016. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on May 3, 2016 indicating the amount of \$1,387.0 was due as of May 1, 2016 (D.S. confirmed that the Tenant had a \$1.00 credit at the time the Notice was issued).

Based on the testimony of D.S., I find that the Tenant was served with the Notice on May 3, 2016 by posting to the rental unit door. Section 90 of the *Act* provides that documents served in this manner are deemed served three (3) days later. Accordingly, I find that the Tenant was served with the Notice as of May 6, 2016.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, May 11, 2016. The Notice also explains the Tenant

had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

D.S. testified that the Tenant did not apply to dispute the Notice and did not pay the outstanding rent. She further testified that the Tenant did not pay rent for June 2016.

At the within hearing the Landlord sought the sum of \$2,775.00. The Monetary Orders Worksheet introduced in evidence as well as the testimony of D.S. confirms this amount includes a claim for lost rent for July 2016.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Accordingly, I find that the Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenant. The Landlord must serve the Order on the Tenant and if necessary may file and enforce the Order in the B.C. Supreme Court as an Order of that Court.

I also find that the Landlord has established a total monetary claim of \$2,181.00 comprised of \$2,081.00 in outstanding rent (for April, May and June 2016) and the \$100.00 fee paid by the Landlord for this application.

As the hearing occurred on June 21, 2016, I decline the Landlord's request for loss of rent for July 2016 as that loss has not yet been incurred.

I order that the Landlord retain the security deposit of \$350.00 in partial satisfaction of the claim and I grant the Landlord a Monetary Order under section 67 for the balance due of **\$1,831.00**. The Landlord must serve this Monetary Order on the Tenant and may file and enforce it in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an order of possession, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a monetary order for the balance due.

This decision is final and binding on the parties, except as 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: June 21, 2016

Residential Tenancy Branch