



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRSTSERVICE RESIDENTIAL BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes opr, mnsd, mnr, ff

Introduction

The landlord applies for an Order of Possession, a Monetary Order for unpaid rent and loss of rental income and late fees, and an order to retain the security deposit.

The landlord's representative and the tenant both attended the hearing. I accept that the tenant was served the Application for Dispute resolution hearing package and notice of this hearing, as well as the 10 Day Notice to End Tenancy (dated April 19, 2016). The tenant confirmed receipt of these documents.

Issues to Be Decided

- Is the 10 Day Notice to End Tenancy effective to end this tenancy, and entitle the landlord to an Order of Possession?
- What amount is due and payable by the tenant to the landlord?
- Is the landlord entitled to retain the deposit in partial satisfaction of the amount owing?

Background and Evidence

This tenancy began on September 1, 2014. Rent is due on the 1st day of each month, currently in the amount of \$1,485.00. A security deposit of \$725.00 was paid at the start of the hearing. The landlord served the tenant with a 10-Day Notice to End Tenancy on April 19, 2016, after not receiving rent for the month of April. At that time there was also \$35.00 owing in late payment fees for March and April. The tenant did not pay the rent or apply for dispute resolution within the required five days of receiving the Notice to End Tenancy. No subsequent rent or payment has been made by the tenant, although he submits that he has now found work and will be able to make a payment on April 24. The tenant remains in occupation.

Analysis

Section 66(2) of the Residential Tenancy Act provides me with authority to extend the 5 day time period for payment of overdue rent under a 10 Day Notice only if the landlord

agrees, or if deductions were made for emergency repairs. Neither of those circumstances apply in this case. Accordingly, by virtue of section 46(5)(a) of the Residential Tenancy Act, in the absence of the required rental payment after being served with a 10 Day Notice to End Tenancy, and in the absence of a dispute of the notice within the 5 day period set out in the Notice, the tenant is conclusively presumed to have accepted the end of the tenancy agreement on the effective date of the Notice. As the effective date of the Notice has passed, the landlord has established a right to immediate possession. Pursuant to Section 55(2)(b) of the Residential Tenancy Act, I issue an Order of Possession effective 48 hours following service upon the tenants. Should the tenants fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The tenant has benefitted from continued possession of the premises. The Order of Possession will require the tenant to vacate on or about June 10, and the landlord is entitled to recover the rental arrears and loss of rental income to that date, plus the late payment charges, as well as his filing fee of \$100.00. This totals \$3,625.00 and includes rent for April (\$1,485.00), rent for May (\$1,485.00), and pro-rated rent to June 10 (\$495.00), late fees for March, April and May (\$60.00) and the landlord's filing fee (\$100.00). The landlord may retain the \$725.00 security deposit in partial satisfaction of this award.

Conclusion

The landlord is awarded \$3,625.00. The security deposit including accrued interest to the date of this hearing, totals \$725.00. I order, pursuant to section 38(1)(d) that the full amount of the deposit be retained, in partial satisfaction of the monetary award noted above. I further order that the remaining balance of the award due to the landlord, equalling \$2,900.00, be paid immediately.

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: June 07, 2016

Residential Tenancy Branch