



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Abstract Property Management Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent.

The landlord provided documentary evidence to confirm the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on August 13, 2016 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

Based on the evidence of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the tenancy began as a 1 year fixed term tenancy on May 10, 2016 for the monthly rent of \$775.00 due on the 1st of each month and a security deposit of \$380.00 was paid. The landlord submitted the agreement includes a requirement for the tenant to pay 20% of the utility bill for the residential property and a fee of \$45.00 would be charged for late payment of rent.

The landlord submitted into evidence a photograph of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on June 22, 2016 with an effective vacancy date of July 2, 2016 due to \$775.00 in unpaid rent.

The landlord submitted the tenant failed to pay the full rent owed for the month of June 2016 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on June 22, 2016.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days. The landlord confirms the tenant did make a payment of \$695.00 on July 5, 2016.

The landlord submits that the tenant has since failed to pay rent for the months of July, August, September, and October 2016. The landlord seeks a monetary order for this unpaid rent as well as \$45.00 for each month as per the late payment clause in the tenancy agreement addendum. The landlord also seeks compensation for unpaid utility charges in the amounts of \$7.42 for the start of the tenancy to May 18, 2016; \$26.18 for the period of May 18 to July 18, 2016; and \$26.18 for the period of July 18, 2016 to September 18, 2016.

Analysis

I have reviewed all documentary evidence and testimony from the landlord and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on June 25, 2016 and the effective date of the notice is amended to July 4, 2016, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenant is conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

As to the landlord's monetary claim I find the landlord is entitled to compensation for rent in the amount of \$3,875.00 less the payment of \$695.00 received by the landlord on July 5, 2016 for a total of \$3,180.00. I also find the landlord has established the claim for utility costs totaling \$59.78.

As to the landlord's claim for late payment fees, I find the tenancy agreement allows for the landlord to collect a late payment fee. However, Section 7(1)(d) of the Residential Tenancy Regulation restricts the amount the landlord can charge for a late fee to \$25.00 per occurrence. As such, I find the landlord is entitled to \$125.00 for 5 months of late payment fees.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply

with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3,464.78** comprised of \$3,180.00 rent owed; \$59.78 utility charges owed; \$125.00 late payment fees and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$380.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$3,084.78**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: October 05, 2016

Residential Tenancy Branch