



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ISLAND ENTERTAINMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent;
- a monetary order for compensation for loss;
- a monetary order to keep all or part of the security deposit; and
- recovery of the filing fee paid for this application from the tenant.

The tenant did not appear. The landlord's agent ("landlord") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered.

The landlord testified that the Application and Notice of Hearing, was served in person by leaving a copy with the tenant on November 18, 2016. I find that the tenant has been duly served with the landlord's Application and Notice of Hearing on November 18, 2016, in accordance with section 89 of the *Act*.

Preliminary and Procedural Matters

At the start of the hearing, the landlord withdrew his claim for:

- a monetary order for compensation for loss;
- a monetary order to keep all or part of the security deposit

Issue(s) to be Decided

- Is the landlord entitled to an order for possession for unpaid rent, pursuant to s.55 of the *Act*?
- Is the landlord entitled to a monetary order for unpaid rent, pursuant to s.67 of the *Act*?

- Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to Section 72 of the *Act*?

Background and Evidence

The landlord testified that a month to month tenancy started on May 1, 2016 pursuant to a verbal tenancy agreement. The rent is \$500.00 due on the first day of each month. The landlord testified that he did not receive a security deposit from the tenant.

The landlord testified that he did not receive rent from the tenant that was due for each of the months of November and December 2016. The landlord's claim for unpaid rent for these months is \$1,000.00.

The landlord testified that on November 9, 2016 a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), which had an effective date of November 19, 2016, was served in person by leaving a copy with the tenant. The Notice indicated that it would be automatically cancelled if the landlord received \$500.00, the unpaid rent as at November 1, 2016, within five days after the tenant was presumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental unit by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

Analysis

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

As the tenant was served with the Application and Notice of Hearing and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, I find the landlord's application is fully successful as I find the evidence supports the landlords' claim and is reasonable.

In the absence of evidence to the contrary, I find that the tenant was required to pay the monthly rent of \$500.00 for each of the months of November and December 2016. Accordingly, I find that the landlord has established a total monetary claim in the amount of \$1,000.00 for unpaid rent.

I find that the tenant was served with a 10 Day Notice on November 9, 2016 that required the tenant to vacate the rental unit on November 19, 2016, pursuant to section 46 of the *Act*.

Section 46 of the *Act* stipulates that a tenant has five days from the date of receiving the 10 Day Notice to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights; therefore, pursuant to section 46(5) of the *Act*, I find that the

tenant is conclusively presumed to have accepted that the tenancy has ended on the effective date of the Notice.

As the landlords' claim has merit I find, pursuant to section 72 of the *Act* that the landlord is entitled to recover the \$100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

As the tenancy has ended pursuant to section 46(5), I find that the landlord is entitled to an Order of possession that is effective two days after service on the tenant.

Based on these determinations, I grant the landlord a monetary Order for \$1,100.00.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is entitled to a monetary order in the amount of \$1,100.00 for rent owed since November 1, 2016 and the filing fee.

The landlord is granted a monetary order in the amount of \$1,100.00 which must be served on the tenant as soon as possible. Should the tenant fail to comply with this monetary order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: December 22, 2016

Residential Tenancy Branch