



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, 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 two agents for the landlord.

The agents testified 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 January 27, 2017 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 testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the Act.

The landlord's agents submitted that they did not wish to retain the security deposit in this Application but would reserve that claim to a future date. I amend the landlord's Application for Dispute Resolution to exclude the matter of the security deposit.

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; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act* (Act).

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on January 31, 2016 for a 12 month fixed term tenancy beginning on March 1, 2016 for a monthly rent of \$1,375.00 due on the 1st of each month with a security deposit of \$687.50 paid. The Agreement contains clause 3.03 that states for rent unpaid 5 days after it is due the landlord will charge a late payment fee of \$25.00; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on January 9, 2017 with an effective vacancy date of January 19, 2017 citing \$1,375.00 in unpaid rent due January 1, 2017.

The landlord submits that the tenant failed to pay rent for the month of January 2017 and the 10 Day Notice was served to the tenant on January 9, 2017 at 5:30 p.m. by posting on the rental unit door and that the service was witnessed by a third party. The landlord testified that since the tenant was served with the 10 Day Notice to End Tenancy she has paid the landlord \$200.00 on January 11, 2017.

The landlord seeks \$1,175.00 rent plus \$25.00 late fee for January 2017 and \$1,375.00 rent plus \$25.00 late fee for February 2017.

Analysis

I have reviewed all documentary evidence and testimony 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 January 12, 2017 and the effective date of the notice is amended to January 22, 2017, 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.

Based on the landlord's undisputed testimony I find the landlord has established entitled to the amounts as claimed above.

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 and I grant a monetary order in the amount of **\$2,700.00** comprised of \$2,550.00 rent owed; \$50.00 late fees and the \$100.00 fee paid by the landlord for this application.

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: February 20, 2017

Residential Tenancy Branch

