



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cornerstone Construction
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: OPR, MNR, MNSD, FF
 Tenant: CNR, O

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord only.

The landlord 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 May 10, 2013 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenant on the 5th day after it was mailed.

Based on the testimony of the landlord and the fact that the tenant's Application to cancel a notice to end tenancy was held at the same time as the landlord's Application, 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 *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to have the landlord accept her roommate as a tenant for the cost of the Application for Dispute Resolution, pursuant to Section 46 of the *Act*.

Background and Evidence

The landlord provided into evidence:

- A copy of a tenancy agreement signed by the parties on September 8, 1999 for a month to month tenancy beginning on September 30, 1999 for a current monthly rent of \$803.00 due on the last day of each month with a security deposit of \$350.00 paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on May 2, 2013 for unpaid rent in the amount of \$803.00 due on May 1, 2013.

The landlord testified the tenant failed to pay the full rent owed for the month of May 2013 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 May 2, 2013 at 9:00 a.m.

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 within five days, however she did file an Application to dispute the Notice to End Tenancy on May 3, 2013. The landlord testified that the tenant did provide him with a cheque today in the amount of \$300.00 but that he has not yet had a chance to negotiate the cheque.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. Based on the fact the tenant filed her Application to dispute the notice on May 3, 2013 I find the notice was received by the tenant no later than May 3, 2013 and the effective date of the notice is amended to May 13, 2013, 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*.

In addition, as the tenant did not attend this hearing I dismiss her Application to cancel the Notice to End Tenancy. As such, I find that the tenant's failure to attend the hearing for her Application has the same effect as not filing the Application at all.

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.

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 **\$853.00** comprised of \$803.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$383.47 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$469.53**. I note that should the landlord successfully negotiate the cheque in the amount of \$300.00 that he received today that this amount should also be considered as partial satisfaction of this order.

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: May 29, 2013

Residential Tenancy Branch

