



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HK PACIFIC HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This non-participatory matter was conducted by way of a direct request proceeding, pursuant to section 55(4) of the Residential Tenancy Act (the "Act"), via the documentary submissions only of the landlord, and dealt with an application for dispute resolution by the landlord for an order of possession for the rental unit and a monetary order for unpaid rent, pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice").

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 13, 2014, the landlord served the tenant with the Notice of Direct Request Proceeding, including the landlord's application, by registered mail. Pursuant to section 90 of the Act, the documents were deemed served 5 days later.

Based on the written submissions of the landlord, I find that the tenant has been served with the Direct Request Proceeding documents as required by section 89(1) of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit and a monetary order due to unpaid rent?

Background and Evidence

The landlord submitted the following additional evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on February 28, 2005, indicating a monthly rent of \$640 due on the first day of the month, beginning on March 1, 2005;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was dated May 2, 2014, with a stated effective move out date of May 12, 2014, listing \$815 in unpaid rent as of May 1, 2014;
- Copies of Notices of Rent Increase and a tenant ledger sheet, which indicates that the current monthly rent is \$765;
- A copy of a later agreement between the parties that the tenant was to pay \$50 per month for rental of the garage;
- A signed Proof of Service declaring that the tenant was served the Notice by attaching it to the tenant's door on May 2, 2014. Section 90 of the Act deems the tenant was served on May 5, 2014. Therefore the effective vacancy date, May 12, 2014, is automatically corrected to May 15, 2014, pursuant to section 53 of the Act.

The Notice stated that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

I have no evidence before me that the tenant paid the rent listed or filed an application for dispute resolution to dispute the Notice.

Analysis

I have reviewed the landlord's undisputed documentary evidence and accept that the tenant has been served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities as submitted by the landlord.

I accept the landlord's undisputed documentary evidence 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 that 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. Therefore, I find that the landlord is entitled to an order of possession for the rental unit.

As to the landlord's monetary claim of \$815, listed as unpaid rent for May, the landlord's documentary evidence shows that monthly rent is \$765 and not \$815 as claimed by the landlord. It is apparent that the landlord has listed the garage rental of \$50 as part of their claim for unpaid rent for the rental unit.

Section 55 (4) (b) of the Act allows a landlord to apply through the direct request process for an order of possession for the rental unit and a monetary order in relation to instances of non-payment of rent by the tenant.

I therefore decline to award the landlord compensation for the separate garage rental of \$50; however, I find the landlord is entitled to \$765 for unpaid rent for May 2014, as I find that the landlord submitted sufficient evidence that the monthly rent of the tenant had been increased in allowable amounts under the Act.

Conclusion

Pursuant to section 55(4)(b) of the Act, I grant the landlord an order of possession for the rental unit effective two days after service on the tenant, which is enclosed with the landlord's Decision. This order is a legally binding, final order, and may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court should the tenant fail to comply with the terms of the order of possession. The tenant is advised that costs of such enforcement may be recovered from the tenant.

I grant the landlord a monetary order in the amount of \$765, pursuant to section 67 of the Act, comprised of rent owed, which is enclosed with the landlord's Decision. This order is a legally binding, final order, and should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement may be recovered from the tenant.

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* and is being mailed to both the applicant and the respondent.

Dated: May 21, 2014

Residential Tenancy Branch

