



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Blue Sky Investments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's application for dispute resolution, in which the landlord has requested an Order of possession for unpaid rent, a monetary Order for unpaid rent and loss of rent revenue and to recover the filing fee from the tenant for the cost of this application for dispute resolution.

The agent for the landlord provided affirmed testimony that on April 17, 2015 copies of the application for dispute resolution and Notice of Hearing were sent to the tenant via registered mail to the address noted on the application. A Canada Post tracking number was provided as evidence of service. The mail was not returned to the landlord.

These documents are deemed to have been served on the fifth day after mailing, in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent and loss of rent revenue?

Background and Evidence

The tenancy commenced on February 1, 2013. Rent is \$860.00 due on the first day of each month. A security deposit in the sum of \$430.00 was paid.

Clause 7 of the tenancy agreement requires payment of a late rent fee in the sum of \$25.00.

The landlord stated that on April 5, 2015 at 9 a.m. a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of April 15, 2015, was served by posting to the tenants' door. The landlord supplied a proof of service document, signed by the agent and witness N.N., confirming service occurred.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$885.00 within 5 days after the tenant was assumed 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 by the date set

out in the Notice unless the tenant filed an application for dispute resolution within 5 days.

The landlord confirmed they included a \$25.00 late fee in the sum of rent owed. The tenant owed \$860.00 rent. The tenant has not paid May or June 2015 rent. The landlord has claimed compensation in the sum of \$2,655.00 for unpaid rent from April to June 2015, inclusive, plus late rent fees for each month in the sum of \$25.00.

The landlord confirmed they would like to retain the security deposit in partial satisfaction of the claim.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the 3rd day after it is posted. Therefore, I find that the tenant received the Notice to end tenancy on April 8, 2015.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on April 8, 2015, I find that the earliest effective date of the Notice is April 18, 2015.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was April 18, 2015.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on April 18, 2015, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice ending tenancy 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 accepted that the tenancy has ended on the effective date of the Notice, April 18, 2015.

As the tenancy ended effective April 18, 2015 I find that the landlord is entitled to a late rent fee in the sum of \$25.00 for April 2015. The tenant must then pay a per diem rent for each day the tenant over-holds in the rental unit beyond the effective date of the Notice. Therefore, I find that the claim for late fees for May and June 2015 are dismissed, as the tenancy had ended.

In the absence of evidence to the contrary, I find that the tenant has not paid rent to April 18, 2015 and per diem rent to June 15, 2015 in the amount of \$2,150.00. It is not reasonable to expect the landlord will obtain possession of the rental unit before June 15, 2015. The balance of the claim for loss of June rent revenue is dismissed with leave to reapply should the landlord be unable to obtain possession and place a new tenant in the rental unit.

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Section 72(2) of the Act provides an arbitrator with the ability to deduct any money owed by a tenant to a landlord, from the deposit due to the tenant. Therefore, I find that the landlord may retain the tenant's security deposit in the amount of \$430.00, in partial satisfaction of the monetary claim.

The landlord has been granted an Order of possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,795.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to an Order of possession and monetary Order for unpaid rent and loss of rent revenue and the April 2015 late rent fee.

The late fee for May and June 2015 is dismissed.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

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: June 02, 2015

Residential Tenancy Branch

