



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord's representatives, Y.B. and R.M. appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Y.B. testified that she and R.M. served the Tenant with the Notice of Hearing and their Application on March 18, 2016 by posting to the rental unit door. Posting to the rental unit door is effective service pursuant to section 89(2)(d) of the *Act*

Y.B. further stated that the next day they also personally served the Tenant's friend, who appears to be living in the rental unit with the Tenant. R.M. testified that on March 19, 2016 the Tenant confirmed he had received the application materials from his friend. Service of a person who apparently resides with the Tenant is also effective service pursuant to section 89(2)(c) and accordingly I find the Tenant was duly served.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession?
2. Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which indicated as follows: the tenancy began July 1, 2015; monthly rent was payable in the amount of \$383.00 including \$350.00 in rent and a monthly charge of \$33.00 for cable; and a security deposit in the amount of \$175.00 was paid at the start of the tenancy.

Also introduced in evidence was a letter from the Landlord to the Tenant regarding his rental payments and the outstanding balance of \$71.00. In this letter the Landlord informs the Tenant that he has been underpaying his rent by \$8.00 per month. The letter further informs the Tenant that he owed \$40.00 for the cost to change his lock. The Landlord requested that the Tenant pay the \$71.00 outstanding by February 29, 2016; failing which the Landlord would issue a notice to end tenancy.

Y.B. testified that the Tenant failed to pay the outstanding \$71.00 and as such the Landlord issued a 10 day Notice to End Tenancy for non-payment of rent indicating the amount of \$71.00 was due as of March 1, 2016 (the "Notice").

Based on the filed Proof of Service and the testimony of Y.B., I find that the Tenant was served with the Notice on March 4, 2016 by posting to the rental unit door. Section 90 of the *Act* provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenant was served with the Notice as of March 7, 2016.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, March 12, 2016. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution. As March 12, 2016 is a Saturday, the Tenant had until Monday March 14, 2016 to file an Application for Dispute Resolution.

Y.B. testified that the Tenant did not file an Application for Dispute Resolution and did not pay the outstanding rent by March 14, 2016.

Y.B. stated that the Tenant did, however, pay the outstanding amount on March 24, 2016 such that the Landlord's monetary claim was reduced to \$100.00 for recovery of the filing fee.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

The Tenant did not pay the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the Landlord has established a total monetary claim of \$100.00 comprised of the fee paid by the Landlord for this application. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit, and I authorize the Landlord to retain \$100.00 from the Tenant's security deposit as payment of this amount.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy. The Landlord is granted an Order of Possession, may keep \$100.00 of the security deposit as payment of the filing fee.

This decision is final and binding on the parties, except as 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: April 27, 2016

Residential Tenancy Branch