



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlords' application for an Order of possession and a Monetary Order for unpaid rent. Neither of the two named tenants appeared at the hearing. The landlord testified that he sent the hearing package to the tenants via courier sent to the rental unit on June 16, 2011. The landlord used a courier service as a postal strike was underway at the time of making the application.

I instructed the landlord to send me a copy of the courier receipt and confirmation of delivery after the teleconference call which he did. The confirmation document indicates the package was delivered to the male tenant on June 17, 2011. I deemed male tenant sufficient served with notification of this hearing under section 71 of the Act.

I have insufficient evidence the female tenant was served with hearing documents. Accordingly, this decision and the accompanying orders do not name her.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent and if so, how much is the landlord entitled to recover?

Background and Evidence

The landlord testified as follows:

- The tenancy commenced December 1, 2010;
- The tenants are required to pay rent of \$1,550.00 on the 1st day of every month plus \$30.00 for water under a written tenancy agreement;
- The tenants did not pay the \$800.00 required for a security deposit;

- The landlord would receive \$800.00 from the Ministry for part of the rent and the tenants would pay the landlord instalments to make up the remainder of the rent owed;
- The tenants did not pay \$750.00 of the rent owed for each of the months of April and May 2011;
- On June 4, 2011 the landlord personally served the female tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice);
- The tenants did not pay the outstanding rent indicated on the Notice or dispute the Notice; and,
- The tenants continue to reside in the rental unit.

The Notice indicates that rent of \$2,300.00 was outstanding as of May 20, 2011. The landlord explained this amount is comprised of the outstanding rent of \$750.00 for April 2011; \$750.00 for May 2011; and, \$800.00 for the security deposit.

In making this application the landlords are seeking to recover unpaid rent and the security deposit in the total amount of \$2,300.00. The landlord verbally requested the application be amended to include loss of rent for June and July 2011 as well as unpaid water which I have considered in the analysis below.

The landlord had provided a copy of the 10 Day Notice as evidence for this hearing. At the end of the hearing I instructed the landlord to provide me a copy of the written tenancy agreement which he did.

Analysis

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

The Act provides that a document may be served upon a tenant or an adult person residing with the tenant at the rental unit. By personally serving one of the co-tenants with the Notice on June 4, 2011 I am satisfied that both co-tenants were sufficiently served with the 10 Day Notice.

Since the tenants did not pay the outstanding rent or dispute the Notice I find the tenancy ended on June 14, 2011 and the landlord is entitled to regain possession of the

rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenants. If the tenants do not comply with the Order of Possession the landlord may enforce it in The Supreme Court of British Columbia as an Order of that court.

Upon review of the tenancy agreement, the 10 Day Notice, and upon considering the landlord's testimony I find the landlords entitled to recover unpaid rent for April 2011 and May 2011 in the amount of \$1,500.00. The courier confirmation satisfied me that the tenant was residing in the rental unit in June 2011 and I find the tenant responsible for loss of rent for June 2011. Based upon the landlord's undisputed testimony, I am satisfied the tenants continue to reside in the rental unit and I also hold the tenant responsible for loss of rent for July 2011.

I do not award the landlords compensation for water usage. The tenancy agreement indicates water is included in rent but an unsigned addendum indicates the tenants will pay \$30.00 for water. I find these two documents conflicting and not sufficiently clear. The Act provides that in order for a term to be enforceable it must be expressed clearly.

I do not order the tenant to pay a security deposit as the tenancy has ended. The landlords are awarded the filing fee paid for this application. I provide the landlords with a Monetary Order calculated as follows:

Unpaid rent – April 2011	\$ 750.00
Unpaid rent – May 2011	750.00
Loss of rent – June 2011	1,550.00
Loss of rent – July 2011	1,550.00
Filing fee	<u>50.00</u>
Monetary Order	\$ 4,650.00

The landlords must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

Conclusion

The tenancy has ended and the landlords are provided an Order of Possession effective two (2) days upon the tenant. The landlords are provided a Monetary Order in the amount of \$4,650.00 to serve upon 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*.

Dated: July 07, 2011.

Residential Tenancy Branch