



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlords for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant for the cost of this application.

Both landlords attended the conference call hearing, but only one of the landlords provided affirmed testimony. Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on September 23, 2011, the tenant did not attend. The landlord testified that the documents were sent by registered mail on September 23, 2011 and provided the tracking number of the registration. I find that the landlords have served the tenant according to the provisions set out in the *Residential Tenancy Act*.

All evidence and testimony provided have been reviewed and are considered in this Decision.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent or utilities?
Are the landlords entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The landlord testified that this month-to-month tenancy began on May 15, 2011 and the tenant still resides in the rental unit. Rent in the amount of \$1,080.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$540.00, and no pet damage deposit was collected.

The landlord also testified that the tenant failed to pay rent in full for the month of August, 2011 and paid the landlord \$540.00. The tenant further failed to pay rent in the

amount of \$1,080.00 for the month of September, 2011. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 11, 2011, a copy of which was provided in advance of the hearing. The landlord also testified that although the landlord has only provided the front page of the notice to end the tenancy to the Residential Tenancy Branch, both pages were served on the tenant. The notice is dated September 11, 2011 and contains an expected date of vacancy of September 11, 2011, the same day that it was issued. The notice also states that the tenant failed to pay rent in the amount of \$1,520.00 that was due on September 1, 2011, and the landlord testified that the arithmetic on the notice is incorrect and the tenant actually owed \$1,620.00 for rent for the months of August and September, 2011.

The tenant further failed to pay any rent for the month of October, 2011. The landlord requests an Order of Possession and a monetary order for the unpaid rent in the amount of \$2,700.00, in addition to recovery of the \$50.00 filing fee for the cost of this application.

Analysis

I have no evidence of the tenant to dispute the testimony provided by the landlord, and therefore, I accept the landlord's testimony and evidence. I find that the tenant is in arrears of rent the sum of \$540.00 for August, 2011 and \$1,080.00 for each of September and October, 2011.

I further accept the evidence of the landlord that the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit on September 11, 2011. The *Residential Tenancy Act* states that a notice served by posting it to the door or other conspicuous place is deemed to have been served 3 days after posting it, which I find is September 14, 2011. The notice does not provide the tenant with 10 days' notice as required under the *Act*, however, pursuant to Section 53 of the *Act*, I find that the correct effective date of the notice is September 24, 2011, and the effective date of the notice is changed to that date. The *Act* specifically states as follows:

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

The *Act* also states that a tenant must pay rent when it is due, and if the tenant fails to do so, on any day after the date rent is payable, the landlord may serve a tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once served, the tenant has 5 days to pay the rent in full or dispute the notice by filing an application for dispute resolution. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which is 10 days after service. In this case, the tenant was deemed to have been served on September 14, 2011. The tenant did not pay the outstanding rent or dispute the notice within the 5 days provided in the *Act*, and therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on September 24, 2011.

I further find that the tenant did not move from the rental unit on September 24, 2011 and therefore the landlords are entitled to an Order of Possession for unpaid rent and a monetary order for unpaid rent in the amount of \$2,700.00. The landlords are also entitled to recovery of the \$50.00 filing fee for the cost of this application.

The landlords have not made an application to keep the \$540.00 security deposit, however the *Act* also permits me to order so:

72 (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

- (a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and
- (b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

In the circumstances, I find that it is just to order that the landlords keep the security deposit and to make a monetary order for the balance due to the landlords.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords. If the tenant fails to comply with the Order of Possession, the order may be enforced through the Supreme Court of British Columbia.

I further order the landlords to keep the security deposit in the amount of \$540.00 in partial satisfaction of the claim and I grant the landlords a monetary order pursuant to Section 67 of the *Residential Tenancy Act* for the balance due of \$2,210.00.

This order is final and binding on the parties and may be enforced by the landlords.

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: October 21, 2011.

Residential Tenancy Branch