



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 landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act"), seeking an order of possession for unpaid rent or utilities; a monetary order for unpaid rent or utilities; and to recover the filing fee.

The agent for the landlord and the tenant appeared by conference call and gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

Preliminary and Procedural Matters

The landlord testified that in addition to the rent owed on the application, the tenant has subsequently not paid any money for June 2012. As a result, the landlord requested to amend the application to include money owed for June 2012 rent. The landlord also stated that the tenant continues to occupy the rental unit. As this request to amend the application does not prejudice the respondent tenant as the tenant was aware that rent is due pursuant to the tenancy agreement, I amend the application from \$1,550.00 (consisting of \$20.00 owed from January 2012 rent; \$510.00 rent for the months of March, April, and May 2012) to include an additional \$510.00 for loss of rent for June 2012, for a total claim of \$2,060.00.

Issue(s) to be Decided

- Should the landlord be granted an order of possession?
- Should the landlord be granted a monetary order?
- Should the landlord recover the filing fee?

Background and Evidence

The landlord provided a copy of the signed tenancy agreement as evidence. The tenancy agreement shows the tenancy was initially a three month fixed term tenancy which began on January 1, 2012, and was scheduled to end on April 30, 2012. The

landlord testified that the tenancy agreement became a month to month tenancy agreement, however, as the tenant did not initial beside the area on the agreement that set out the fixed term. According to the testimony of both parties, the rent of \$510.00 was due on the first day of each month. A security deposit was not required.

The landlord testified that the only rent payments received to date were one payment of \$490.00 which left a shortfall of \$20.00 for January 2012 rent; and \$510.00 for February 2012 rent. The landlord stated that there has been no rent paid for March, April, May and June 2012.

The tenant confirmed she did not dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") when it was served in person. The effective date on the Notice was May 2, 2012 and is corrected under the *Act* to May 6, 2012. The tenant testified that she is dealing with both income assistance and another Ministry regarding her children and that she has faced many difficulties lately.

The agent for the landlord provided a copy of the written tenancy agreement with addendum; the Notice; and a ledger as evidence.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of Possession - I find that the landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*. The tenant failed to pay the rent or dispute the Notice within 5 days after receiving the Notice. Therefore, the tenant is conclusively presumed to have accepted that the tenancy ends on the corrected effective date of the notice, May 6, 2012 and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I grant the landlord's request for an order of possession.

Claim for unpaid rent - The landlord claims for unpaid rent of \$2,060.00 as described above. Pursuant to section 26 of the *Act* a tenant must pay rent when it is due in accordance with the tenancy agreement.

Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and I award them a monetary claim of **\$1,550.00** for rent owed.

Loss of rent – As noted above this tenancy ended May 6, 2012, in accordance with the 10 Day Notice, therefore, the landlord is seeking loss of rent for June 2012 since the tenant has failed to pay June 1, 2012 rent and is still occupying the unit. The landlord will not regain possession of the unit until after service of the order of possession and will therefore lose rent for June 2012.

Based on the above, I find that the Landlords have succeeded in proving their loss, as listed above, and I approve their claim for **\$510.00** for loss of June 2012 rent.

The landlords have succeeded with their application; therefore I award recovery of the **\$50.00** filing fee. The total monetary amount of **\$2,110.00** consists of \$1,550.00 from the application claim; \$510.00 for June 2012 loss of rent; and recovery of the \$50.00 filing fee.

Conclusion

I find that the landlord has proven his claim and is, therefore, entitled to an order of possession effective **two days** after service upon the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

I find that the landlord has established a total monetary claim of **\$2,110.00** as described above. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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 12, 2012

Residential Tenancy Branch