



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 an Application for Dispute Resolution by the landlord to obtain an order of possession for unpaid rent; a monetary order for unpaid rent; and to recover the filing fee.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The landlord testified that the tenant was served the Notice of a Dispute Resolution Hearing on June 1, 2012, by registered mail. A copy of the registered mail receipt with tracking number was provided in advance of the hearing as documentary evidence and was addressed to respondent at the rental unit. The tenant did not attend the hearing. I find that the tenant was served with the Notice of a Dispute Resolution Hearing in accordance with the *Act*.

Preliminary Matter

The landlord originally dated her application for dispute resolution on April 30, 2012, however, did not submit the application until May 31, 2012. The landlord amended her application prior to submitting it; to include rent owing for June 2012 as follows:

April 2012 portion of rent owing	\$375.00
May 2012 full rent owing	\$725.00
June 2012 full rent owing	\$725.00
UNPAID RENT TOTAL	\$1,825.00

The landlord stated that the tenant continues to occupy the rental unit and did not pay rent for June 2012. As a result of the above, the landlord is seeking a total monetary order of \$1,825.00 in unpaid rent.

Issue(s) to be Decided

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

Background and Evidence

The landlord affirmed that month to month tenancy agreement began on July 22, 2009. Rent was due on the first day of each month in the amount of \$725.00. The tenant paid \$347.50 as a security deposit on July 7, 2009.

The landlord confirmed service of the 10 Day Notice for Unpaid Rent or Utilities dated April 19, 2012, by posting on the tenant's door on April 19, 2012 with an effective date of April 29, 2012. The effective date corrects under the *Act* to May 2, 2012. The landlord submitted a proof of service document as evidence prior to the hearing, which was signed by a third party as a witness.

The landlord testified that \$350.00 of April 2012 rent was paid on May 1, 2012. This left a balance owing for April 2012 rent of \$375.00. The landlord stated that rent of \$725.00 was not paid for the months of May and June 2012.

The landlord provided copies of the written tenancy agreement; and a 10 Day Notice to end Tenancy for Unpaid Rent or Utilities (the "Notice"); as evidence for this proceeding.

Analysis

Order of possession - I find that the tenant failed to pay the rent or dispute the Notice within 5 days after receiving the Notice, and that the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ends on the corrected effective date of the Notice. Accordingly, I grant the landlord an order of possession.

Claim for unpaid rent— The landlord testified that a portion of April 2012 rent was received late on May 1, 2012. The landlord stated that no rent has been paid for the months of May and June 2012. 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. The tenant continues to occupy the unit. The landlord will not regain possession of the unit until after service of the order of possession and has not received rent for the months of May and June 2012. I find the landlord has met the burden of proof and I award the landlord a monetary claim of **\$1,875.00** as described below.

The landlord is holding a security deposit of \$347.50 which was paid by the tenant on July 7, 2009, and includes \$0.00 in interest since that date.

The landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit plus interest as follows:

April 2012 portion of rent owing	\$375.00
May 2012 rent owing	\$725.00
June 2012 rent owing	\$725.00
Filing fee	\$50.00
Less security deposit including interest	(\$347.50)
TOTAL	\$1,527.50

Conclusion

I find that the landlord has proven her 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 \$1,875.00 as indicated above. I order that the landlord retain the deposit and interest of \$347.50 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$1,527.50**. 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 19, 2012

Residential Tenancy Branch