



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 agents for the landlord 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 during the hearing.

As the tenant did not attend the hearing, service was considered. The agents for the landlord testified that the Notice of Hearing and evidence package was served via registered mail to the tenant at the rental unit address on May 29, 2012. A registered mail receipt tracking number was provided during the hearing. I find the tenant was served accordance with the *Act*.

Preliminary Matter

The agents for the landlord testified that although the application was submitted on May 28, 2012, the tenant did make a \$450.00 payment late in the day on May 28, 2012. As a result, the landlord requested that the amount as claimed on the application for unpaid rent be reduced from \$2,289.00 to \$2,263.00 as follows:

Original monetary claim for unpaid rent	\$2,289.00
Less payment of \$450.00 received from tenant on May 28, 2012	(\$450.00)
June 2012 unpaid rent	\$424.00
UNPAID RENT TOTAL	\$2,263.00

The agents for the landlord 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 would be aware that rent is due pursuant to the tenancy agreement, and no notice was given by the tenant, I amend the application to \$2,263.00 as described above.

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 a month to month tenancy which began on December 1, 2008. According to the testimony provided, the tenant's portion of the rent was \$424.00 and was due on the first day of each month. A security deposit of \$350.00 was received from the tenant at the start of the tenancy.

Documentary evidence filed by the landlord indicates the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") dated May 10, 2012, by registered mail on May 10, 2012, with an effective date of May 31, 2012. The notice states the tenant had five days to pay the rent in full or apply for dispute resolution or the tenancy would end 10 days from the service date. The tenant did not apply to dispute the notice to end tenancy or pay the full rent in full within five days from the date of service.

The agents for the landlord testified that rent has been late or left in arrears in 30 of the past 43 months. The agents for the landlord stated that the tenant continues to occupy the rental unit and is seeking an order of possession as a result.

The agents for the landlord provided a copy of a list of arrears, rent calculations, rental payment breach letter, the Notice; and a proof of service 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 tenant failed to pay the full rent owing or dispute the Notice within 5 days after receiving the Notice. Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I grant the landlord's request for an order of possession.

Claim for unpaid rent - The landlord lowered their original application for unpaid rent from \$2,289.00 to \$2,263.00 as described above. Pursuant to section 26 of the *Act* the 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 \$2,263.00 for rent owed.

The landlord is holding a security deposit in the sum of \$350.00. The security deposit including interest since December 1, 2008 totals \$350.44. The landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee. The total monetary amount of **\$2,313.00** consists of \$2,263.00.00 in unpaid rent and recovery of the \$50.00 filing fee.

Conclusion

I find that the landlord is 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 **\$2,313.00**. I order that the landlord retain the deposit and interest of **\$350.44** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,962.56**. 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 18, 2012

Residential Tenancy Branch