



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPC OPQ OPB MNR MNDC FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession based on unpaid rent or cause, tenant does not qualify for subsidized housing and for breaching an agreement with the landlord, a monetary order for unpaid rent and money owed or compensation for damage or loss, and to recover the filing fee.

The agent for the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent for 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 agent for the landlord provided a registered mail receipt indicating that the tenant was served the Notice of a Dispute Resolution Hearing on June 5, 2012. A copy of the registered mail receipt with tracking number was provided 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 in accordance with the Act.

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 or for money owed or compensation under the Act, regulation or tenancy agreement?
- Should the landlord recover the filing fee?

Background and Evidence

The agent for the landlord affirmed that the month to month tenancy agreement began on April 1, 2005. Rent was due on the first day of each month in the amount of \$480.00, which was the tenants' portion of the subsidized rent. The tenant paid \$463.00 as a security deposit on April 1, 2005.

The agent for the landlord confirmed service of the 10 Day Notice for Unpaid Rent or Utilities (the "Notice") dated May 22, 2012, by posting on the tenant's door on May 22, 2012 with an effective date of June 1, 2012. The agent for the landlord stated that the posting of the Notice was witnessed by a supervisor for the landlord.

The agent for the landlord testified that rent in the amount of \$480.00 for May 2012 and \$480.00 for June 2012 for a total of \$960.00 was unpaid.

The landlord provided copies of the written tenancy agreement, correspondence, notices, and other documents 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. The effective date of the Notice corrects under the *Act* to June 4, 2012. 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 agent for the landlord testified that rent had not been paid for the months of May and June 2012 and that a total of \$960.00 remained owing by the tenant. 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 landlord 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 \$980.00.

The landlord is holding a security deposit of \$463.00 which was paid by the tenant on April 1, 2005. Interest accrued since that date is \$16.39 for a total security deposit of **\$479.39.**

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:

May 2012 rent owing	\$480.00
June 2012 rent owing	\$480.00
Filing fee	\$50.00
Less security deposit with interest	(\$479.39)
TOTAL	\$530.61

Conclusion

I find that the landlord has proven their 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 **\$1,010.00** as indicated above. I order that the landlord retain the deposit and interest of \$479.39 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$530.61**. 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 28, 2012

Residential Tenancy Branch