



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD 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 keep all or part of security deposit; and to recover the filing fee.

The tenant and the agent 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 to me.

The tenant confirmed that she received the application for dispute resolution and evidence package from the landlord. I find the tenant was served in accordance with the *Act*.

Issue(s) to be Decided

- Should the landlord be granted an order of possession for unpaid rent?
- Should the landlord be granted a monetary order for unpaid rent?
- Should the landlord be permitted to retain all or a part of the security deposit for unpaid rent?
- 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 began on August 1, 2001. According to the testimony provided by both parties, rent in the amount of \$935.00 was due on the first day of each month. A security deposit of \$390.00 was received from the tenant on July 26, 2001.

The tenant confirmed she was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") by an agent for the landlord on May 10, 2012 with

an effective date of May 20, 2012. The tenant confirmed that she did not dispute the Notice and has not paid rent since April 2012.

The agent for the landlord testified that no rent has been paid for the months of May and June 2012, for a total of \$1,870.00 in unpaid rent. The tenant confirmed that she continues to occupy the rental unit.

The tenant testified that she has gone through a difficult time lately having to take care of her daughter who was seriously injured and is also taking care of an infant child. The agent for the landlord stated that she was sympathetic for the tenant's circumstances, however there have been multiple late rent payments since 2008, and as a result was not willing to consider a settled agreement during the hearing.

The landlord provided a copy of the written tenancy agreement; the Notice; proof of service; a ledger and a registered mail receipt 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 - The tenant failed to pay the rent or dispute the Notice within 5 days after receiving the Notice. Therefore, the tenant is conclusively presumed under section 46 of the *Act* 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 claims for unpaid rent of \$1,870.00 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.

The security deposit of \$390.00 was paid by the tenant on July 26, 2001. Interest calculated since July 26, 2001 is \$19.09 for a total security deposit with interest in the amount of \$409.09.

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 \$1,870.00 for rent owed.

The landlord has succeeded with their application; therefore I award recovery of the \$50.00 filing fee. The total monetary amount of **\$1,920.00** is comprised of \$1,870.00 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 **\$1,920.00**. I order that the landlord retain the security deposit and interest of \$409.09 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$1,510.91**. 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 26, 2012

Residential Tenancy Branch