



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNR, MNSD, OPB

Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for an Order of Possession, a request for a monetary order for \$2459.54, and a request for recovery of the \$50.00 filing fee.

Background and Evidence

The applicant testified that:

- This tenancy ended June 30, 2012 pursuant to a fixed term tenancy agreement that required the tenant to vacate at the end of the term.
- The tenant has refused to vacate the rental unit and therefore he is requesting that an Order of Possession be issued.
- Rent for this rental unit is \$950.00 per month.
- The tenant had also failed to pay any rent for the month of July 2012; however he has subsequently paid \$650.00 which has been accepted for use and occupancy only.
- He is therefore requesting a monetary order for the remaining \$300.00 for the month of July 2012.
- The tenant has also failed to pay his City of Kelowna a utility bill in the amount of \$559.54, and that money will be transferred to the landlord's taxes.

- It is now well into July 2012 and since the tenant has not vacated he finds it very unlikely that he will be able to re-rent the unit for August 2012 and therefore he is also asking for the full rental revenue of \$950.00 for the month of August 2012.
- Therefore the total reduced amount he is asking for is as follows:

Outstanding July 2012 rental revenue	\$300.00
Expected lost rental revenue for August 2012	\$950.00
Utilities outstanding	\$559.54
Filing fee	\$50.00
Total	\$1859.54

He further requests an order to keep the full security deposit a \$475.00 towards the claim and requests that a monetary order be issued for the difference.

The respondent testified that:

- He did sign a tenancy agreement that required him to vacate the rental unit at the end of the fixed term, however he has signed the same agreement other years and the landlord has always agreed to a new tenancy agreement.
- He did not realize that the landlord actually expected him to vacate at the end of this term.
- He has paid \$650.00 for July 2012 however when he paid it, the landlord told him he was not accepting it as rent, it was only accepted for use in occupancy of the rental unit.
- He cannot afford to pay the outstanding utilities, because he actually paid his July 2012 rent twice; however the landlord states that he never found the first envelope of rent money that was left for him.
- He does not want to move out of the rental unit.

Analysis

It is my finding that the tenant is required to vacate the rental unit as agreed on the fixed term tenancy agreement that was signed on June 3, 2011.

The term of that tenancy ended on June 30, 2012 and on the tenancy agreement the tenant initialled the box that states that the tenant must move out of the rental unit at the end of the term.

Therefore I will allow the landlords request for an Order of Possession.

It is also my finding that the tenant has only paid \$650.00 of his \$950.00 July 2012 rent, leaving a total of \$300.00 outstanding, and therefore I allow that portion of the landlords monetary claim.

I also allow the landlords claim for outstanding utilities, because the tenant states that he cannot afford to pay these utilities, and if he does not they will go on the landlords taxes.

I will not allow landlords request for August 2012 rental revenue, as this application is premature. The landlord is required to attempt to mitigate his loss by attempting to re-rent the unit. I therefore dismiss this portion of the claim with leave to reapply at a later date, if the landlord finds that he is unable to rent the unit for the month of August 2012.

I also order recovery of the \$50.00 filing fee.

Therefore the total amount of the landlord's claim that I have allowed is as follows:

Outstanding rental revenue for July 2012	\$300.00
Outstanding utilities	\$559.54
Filing fee	\$50.00
Total	\$909.54

Conclusion

I have issued an Order of Possession for 1 p.m. July 31, 2012.

I have allowed \$909.54 of the landlord's monetary claim and I therefore order that the landlord may retain the full security deposit of \$475.00 and I have issued a monetary order in the amount of \$434.54.

As stated above the claim for August 2012 rental revenue in the amount of \$950.00 is dismissed with leave to reapply.

This decision 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: July 25, 2012.

Residential Tenancy Branch