



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 landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:45 p.m. in order to enable her to connect with this teleconference hearing scheduled for 1:30 p.m. The landlords attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlords testified that they sent the tenant the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on June 14, 2012 by registered mail. They testified that they sent a copy of the original and amended dispute resolution hearing packages by registered mail on June 28, 2012 and July 5, 2012 respectively. They provided Canada Post Tracking Numbers to confirm each of the above registered mailings. They said that Canada Post records confirm that the above documents were received by the tenant. I am satisfied that the landlords served the above documents to the tenant in accordance with the *Act*.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to recover their filing fee for this application from the tenant?

Background and Evidence

This two-year fixed term tenancy commenced on September 1, 2011. Monthly rent is set at \$2,200.00, payable in advance on the first of the month. The landlords continue to hold the \$1,100.00 security deposit for this tenancy paid on August 20, 2011.

The landlords said that they issued the 10 Day Notice because the tenant had only paid one-half of the June 2012 rent for this rental unit. On June 24, 2012, a friend of the tenant's paid \$380.00 towards the \$1,100.00 amount identified as owing in the 10 Day Notice of June 14, 2012. When the landlords issued a receipt for that payment, the

landlords understood that the tenant intended to pay the remainder of the amount owing later that day. The landlords testified that the remainder of the amount identified as owing in the 10 Day Notice for June 2012 rent was paid by the tenant on June 28, 2012. The landlords noted that their June 28, 2012 receipt to the tenant for her \$720.00 payment stated that it was accepted for use and occupancy only. They submitted copies of these and other receipts issued during this tenancy.

The landlords' original application included a request for a monetary award of \$720.00. The landlords revised this amount in their amended application as they wanted to include their claim for July 2012 rent in their application for dispute resolution.

While the tenant has paid the amount identified as owing for June 2012, the landlords said that the tenant has made no payment towards her July 2012 rent. They said that \$2,200.00 for July 2012 remains outstanding and that there has been a recurring pattern of late payment of rent over the recent months. They asked for an end to this tenancy, the issuance of an Order of Possession, and a monetary Order for the outstanding rent.

Analysis

A male was identified as the sole tenant on the Residential Tenancy Agreement (the Agreement). That male and the respondent identified as the remaining tenant in this application signed as tenants on the Agreement. The landlords said that the male left the premises in December 2011 and the tenancy has continued since then with the respondent as the remaining tenant. As such, I accept the landlord's assertion that the respondent is in fact the tenant and signed the Agreement as one of two tenants for this tenancy.

The tenant failed to pay all of the June 2012 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of this tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by June 29, 2012. I find that the landlords' acceptance of payments from the tenant's friend and the tenant for use and occupancy only did not reinstate this tenancy. As the tenant has not vacated the rental unit, I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

Based on the landlords' undisputed evidence, I find that the landlords are entitled to a monetary award of \$2,200.00 for unpaid rent owing for July 2012. Although the landlords' application does not seek to retain the security deposit for this tenancy, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for their application.

Conclusion

I provide the landlords with a formal copy of an Order of Possession to take effect within 2 days of the landlords' service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlords' favour under the following terms which allows the landlords to recover unpaid rent and their filing fee and to retain the security deposit for this tenancy:

Item	Amount
Unpaid July 2012 Rent	\$2,200.00
Less Security Deposit	-1,100.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,150.00

The landlords are provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 18, 2012

Residential Tenancy Branch