



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR; MNR; MND; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and damages; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing. Both parties were provided the opportunity to make submissions to me and to ask questions of each other.

The Landlord testified that she mailed the Notice of Hearing documents to the Tenant, by registered mail, to the rental unit on June 19, 2012. The Landlord also testified that she provided the Tenant with copies of her documentary evidence by posting the documents through the mail slot on the Tenant's door on July 3, 2012. The Tenant acknowledged receipt of the documents.

Preliminary Matters

At the outset of the Hearing, the Tenant asked permission to tape record the proceedings. I explained to the Tenant that Rule 9.1 of the Residential Tenancy Branch Rules of Procedure does not permit private audio recording of dispute resolution proceedings. I directed the Tenant not to record the proceedings and he stated that he would not.

Rule 2.3 of the Residential Tenancy Rules of Procedure states that for disputes to be combined on an application they must be related. The Landlord stated that she wished to proceed with her application for an Order of Possession and monetary award for unpaid rent. I find that the Landlord's monetary claims for damages are not sufficiently related to her claim for an Order of Possession and Monetary Order for unpaid rent. Therefore, I dismiss the Landlord's application for a monetary award for damages **with leave to reapply**.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This month-to-month tenancy started May 25, 2012. Monthly rent is \$740.00, due on the last day of each month. The Tenant was required to pay a security deposit in the amount of \$370.00 at the beginning of the tenancy.

The Landlord gave the following oral testimony and documentary evidence:

The Tenant has not paid any rent for the rental unit and has not paid the security deposit. He provided two cheques, but they were both returned to the Landlord, "NSF". The Landlord provided copies of the two cancelled cheques in evidence.

On June 5, 2012, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by handing the document to him at the rental unit. The Landlord provided a copy of the Notice and a Proof of Service document with the Tenant's signature on in, acknowledging service.

The Tenant has not paid any of the outstanding rent and has not moved out of the rental unit.

The Landlord also seeks to recover bank fees in the amount of \$50.00 (\$25.00 for each of the returned cheques).

The Tenant gave the following oral testimony:

The Tenant agreed that he has not paid any rent and that he is still living in the rental unit. The Tenant stated that he did not pay rent because the Landlord moved his possessions out of the rental unit on June 4, 2012, breaking his television and losing his recycling card. He stated that she returned his belongings to the rental unit the next day. The Tenant acknowledged that he has not filed an Application for Dispute Resolution.

Analysis

Both parties provided testimony that was not relevant to the Landlord's application. I have made reference in this Decision to the relevant oral testimony and documentary evidence only. Both parties were advised that they are at liberty to file applications for damage or loss, if they chose to do so.

I accept that the Landlord served the Tenant with the Notice to End Tenancy on June 5, 2012. The Tenant did not pay the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to the provisions of Section 46(5) of the

Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on June 15, 2012. I find that the Landlord is entitled to an Order of Possession.

Section 26 of the Act requires tenants to pay rent when it is due, whether or not the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. I find that the Tenant had no right under the Act to deduct any of the rent.

Based on the testimony of both parties, I find that the Landlord has established a monetary claim for unpaid rent in the total amount of **\$1,628.00**.

The regulations allow for an administrative fee of \$25.00 if a financial institution returns a tenant's cheque or for late payment of rent. However, the regulations also provide that such fees cannot be charged unless the tenancy agreement provides for that fee. In this case, there is no provision in the tenancy agreement for that fee. The regulations also allow that the landlord may recover a service fee charged by a financial institution for returning the tenant's cheque. The Landlord did not provide proof of any service fee that she paid to her financial institution. Therefore, I dismiss the Landlord's application for late and NSF fees of \$50.00.

The Landlord has been successful in her application and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

Conclusion

I hereby provide the Landlord an Order of Possession effective **2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord a Monetary Order in the amount of **\$1,678.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order 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 11, 2012.

Residential Tenancy Branch