



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR OPR 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 for unpaid rent, a monetary order for unpaid rent, and to recover the filing fee.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing 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 landlord affirmed that the tenant was served with the Notice of a Dispute Resolution Hearing in person on August 2, 2012 at approximately 7:00 p.m. at the rental unit, which was witnessed by the landlord's mother. The landlord stated that the evidence package was mailed to the landlord via registered mail on August 8, 2012, and provided a tracking number as evidence. The landlord stated the evidence package was addressed to the respondent tenant at the rental unit. Section 90 of the *Act* states that documents served by registered mail are deemed served five days after they are mailed. As a result, I find the evidence package was deemed to be served on August 13, 2012.

The tenant did not attend the hearing. I find that the tenant was served with the Notice of the Dispute Resolution Hearing on August 2, 2012, and served with the evidence package on August 13, 2012. As a result, I find the tenant has been served in accordance with the *Act* and the rules of procedure.

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 recover the filing fee?

Background and Evidence

The landlord affirmed that a month to month tenancy agreement with the tenant began on May 1, 2012. Rent was due on the first day of each month in the amount of \$875.00. The tenant paid \$440.00 as a security deposit at the start of the tenancy.

The landlord confirmed service of the 10 Day Notice for Unpaid Rent or Utilities (the "Notice") dated July 18, 2012, by personal service on July 18, 2012, which was witnessed by the landlord's mother. The Notice indicated an effective date of July 28, 2012. The Notice indicated unpaid rent in the amount of \$1,750.00. The landlord affirmed that the tenant did not dispute the Notice.

The landlord testified that rent in the amount of \$875.00 has not been paid for the months of June, July and August, 2012, for a total of \$2,625.00 in unpaid rent. The landlord affirmed that the tenant provided a cheque for the months of June, July and August, 2012, however each cheque "bounced" due to insufficient funds. The landlord confirmed that the tenant continues to occupy the rental unit.

The landlord provided copies of ledgers, returned cheques, Notices and a summary of events as documentary evidence prior to the hearing.

Analysis

Security deposit – I find the landlord holds a security deposit of \$440.00, which is more than the amount permitted under the *Act*. The maximum security deposit permitted under the *Act*, would be one half of the monthly rent. In this matter, one half of the monthly rent of \$875.00 is \$437.50. As result, the landlord has exceeded the allowable security deposit by \$2.50.

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 is July 28, 2012. The tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ends on the effective date of the Notice. Accordingly, **I grant** the landlord an order of possession.

Claim for unpaid rent– The landlord testified that rent had not been paid for the months of June, July, and August, 2012 and that a total of \$2,625.00 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 June, July or August, 2012. **I find** the landlord has met the burden of proof and I award the landlord a monetary claim of **\$2,625.00**.

The landlord is holding a security deposit of \$440.00 which was paid by the tenant at the start of the tenancy. No interest has accrued since the security deposit was paid by the tenant.

The landlord has succeeded with their application; therefore I award a portion of the filing fee, less the amount of the tenant's overpayment of the security deposit. The filing fee of \$50.00 is therefore reduced by the \$2.50 security deposit overpayment to **\$47.50**.

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:

June 2012 rent owing	\$875.00
July 2012 rent owing	\$875.00
August 2012 rent owing	\$875.00
Partial recovery of filing fee less security deposit overpayment	\$47.50
Subtotal	\$2,672.50
Less security deposit with zero interest	(\$440.00)
TOTAL	\$2,232.50

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 tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

I find that the landlord has established a total monetary claim of **\$2,672.50** as indicated above. I order that the landlord retain the security deposit of \$440.00 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$2,232.50**. 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: August 29, 2012

Residential Tenancy Branch