



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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 and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; 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 3:10 p.m. in order to enable her to connect with this teleconference hearing scheduled for 3:00 p.m. The landlords' agent attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlords' agent (the agent) testified that one of the landlord's representatives posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door at 6:00 p.m. on July 5, 2012. In late evidence, the agent also submitted a Proof of Service document signed by the landlords' representative who posted the 10 Day Notice on the tenant's door. The agent also testified that she sent a copy of the landlords' dispute resolution hearing package to the tenant by registered mail on August 11, 2012. She entered into written evidence a copy of the Canada Post Tracking Number to confirm this mailing. I am satisfied that the landlords served the above documents 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 and losses arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This one-year fixed term tenancy commenced on March 1, 2012. Monthly rent is set at \$880.00, payable in advance on the first of each month. The landlords continue to hold the tenant's \$440.00 pet damage deposit and \$440.00 security deposit paid at the beginning of this tenancy.

The landlords issued the 10 Day Notice for \$1,720.00 in unpaid rent identified as owing for June and July 2012. The 10 Day Notice identified the outstanding rent as \$880.00 for June 2012 and \$880.00 for July 2012. The agent said that the landlords' representative appeared to have erred in adding the two months outstanding rent which should have been \$1,760.00 at that time. The agent confirmed written evidence submitted by the landlords that the tenant paid \$880.00 for the outstanding June 2012 rent on July 31, 2012, and a further \$880.00 for outstanding July 2012 rent on August 15, 2012. She noted that both of these receipts were issued by the landlords' representative for "use and occupancy only" and not to extend this tenancy. The agent testified that \$880.00 in rent remains outstanding for August 2012. The agent also requested recovery of the \$50.00 filing fee.

Analysis

I find that the landlords' acceptance of payments from the tenant on July 31, 2012 and August 15, 2012 for use and occupancy only did not extend this tenancy beyond the effective date of the landlords' 10 Day Notice. The tenant failed to pay all of the rent identified as owing on the 10 Day Notice within five days of receiving that Notice. 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 her tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by July 18, 2012. As that has not occurred, 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 undisputed evidence, I find that the landlords are entitled to a monetary award of \$880.00 for unpaid rent for August 2012. This award is offset by my finding that the landlords are entitled to retain the tenant's \$880.00 pet damage and security deposits plus applicable interest. No interest is payable over this period. I allow the landlords to recover their \$50.00 filing fee 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 the filing fee from the tenant and to retain the tenant's security and pet damage deposits:

Item	Amount
Unpaid August 2012 Rent	\$880.00
Less Pet Damage Deposit	-440.00
Less Security Deposit	-440.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$50.00

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: August 22, 2012

Residential Tenancy Branch