



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 an Application for Dispute Resolution pursuant to the *Residential Tenancy Act* (the “*Act*”) by the landlord to obtain an order of possession for unpaid rent or utilities, a monetary order for unpaid rent or utilities, to keep all or part of a security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

Two agents for 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 matters before me.

As the tenant did not appear at the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice”) was considered. The agents testified that the tenant was served the Notice of a Dispute Resolution Hearing on September 12, 2012 in person at the rental unit address at approximately 7:00 p.m. Based on the undisputed testimony of the agents, I find the tenant was served in accordance with the *Act*.

Preliminary and Procedural Matter

The agents requested to withdraw their request for November 2012 rent as the hearing date was October 15, 2012. As a result, I grant the agents’ request and dismiss their claim for November 2012 rent, with leave to reapply as that claim would be premature at this time.

The agents requested to amend their monetary claim from \$3,325.00 to \$490.00 plus consideration towards the return of the \$50.00 filing fee. The agents’ request was granted as a reduction of the monetary claim does not prejudice the tenant.

Issues to be Decided

- Should the landlord be granted an order of possession under the *Act*?
- Should the landlord be granted a monetary order under the *Act*?

Background and Evidence

The agents testified that a month to month tenancy began on May 1, 2012. Monthly rent in the amount of \$810.00 is due on the first day of each month. The tenant paid \$405.00 as a security deposit at the start of the tenancy, which the landlord continues to hold.

The agents confirmed service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), by person service on August 7, 2012 at approximately 10:00 p.m. at the rental unit address. Proof of service documents were submitted as evidence for service. The effective date on the 10 Day Notice is listed as August 17, 2012 indicating that \$810.00 was due on August 1, 2012. The tenant did not dispute the 10 Day Notice or pay the full amount of rent due within 5 days as indicated on the 10 Day Notice.

The agents testified that their amended monetary claim of \$490.00 consists of the following:

Arrears from months preceding October 2012	\$25.00
Amount owing from October 2012 rent	\$405.00
August 2012 late fee	\$20.00
September 2012 late fee	\$20.00
October 2012 late fee	\$20.00
TOTAL	\$490.00

The agents are seeking an order of possession as the tenant continues to reside in the rental unit, but does not pay his rent on time and remains in arrears. The agents testified that the late fee of \$20.00 is referenced in the signed tenancy agreement submitted as evidence and signed by both parties.

Analysis

Order of Possession - I find that the tenant failed to pay the rent or dispute the 10 Day Notice within 5 days after receiving the Notice, and that 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 agents for the landlord testified that \$405.00 in rent remains owing for October 2012. In addition, the agents are also claiming for previous arrears of \$25.00 from the months preceding October 2012, and late fees of \$20.00 for the months of August, September and October 2012, which is specified in the written tenancy agreement.

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 tenant continues to occupying the unit. The landlord will not regain possession of the unit until after service of the order of possession and has incurred a loss of rent for \$405.00 for the rent arrears for October 2012. **I find** the landlord has met the burden of proof and has established a monetary claim of **\$490.00** as described below.

As the landlord has succeeded with their application, **I grant** the landlord recovery of the **\$50.00** filing fee.

Monetary Order – **I find** that the landlord has established a total monetary claim of **\$540.00** and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit of \$405.00 which has accrued no interest as follows:

October 2012 rent arrears	\$405.00
Rent arrears for months prior to October 2012	\$25.00
Late fee for August 2012	\$20.00
Late fee for September 2012	\$20.00
Late fee for October 2012	\$20.00
Filing fee	\$50.00
Subtotal	\$540.00
Less Security Deposit including \$0.00 in interest	(\$405.00)
TOTAL	\$135.00

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 tenants and may be enforced in the Supreme Court of British Columbia.

I find that the landlord has established a total monetary claim of \$540.00. I authorize that the landlord retain the full security deposit of \$405.00 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$135.00**. 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: October 15, 2012

Residential Tenancy Branch