



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

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice”) was considered. The landlord testified that the tenant was served with the Notice and evidence on September 21, 2012 between 11:00 a.m. and noon by registered mail to the rental unit address where the tenant continues to occupy the rental unit. A copy of the registered mail receipt was provided in advance of the hearing as documentary evidence. The tenant did not attend the hearing. I find the tenant was served in accordance with the *Act*.

Preliminary Matter

The landlord requested to amend his monetary claim from \$1,600.00 to \$1,575.00. As the amendment to the application does not prejudice the tenant, the landlord’s request was permitted. The landlord clarified that amended amount of \$1,575.00 is comprised of unpaid rent of \$550.00 for September 2012, and \$1,025.00 for unpaid rent for the month of October 2012.

Issues 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 be authorized to retain all or part of the security deposit?

Background and Evidence

A month to month tenancy agreement began on August 1, 2012. Monthly rent in the amount of \$1,025.00 is due on the first day of each month. The tenant paid \$512.50 as a security deposit at the start of the tenancy.

The landlord confirmed service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") in the amount of \$575.00, by posting on the tenant's door on September 6, 2012 at approximately 3:30 p.m., which was witnessed by a third party. The landlord submitted a proof of service document as evidence which was signed by a third party as a witness prior to the hearing. The tenant did not dispute the notice or pay rent within 5 days as required by the Notice. The effective date on the notice is listed as September 16, 2012. The landlord clarified during the hearing that the tenant continues to owe \$550.00 for September 2012 rent, and not \$575.00.

The landlord stated that rent in the amount of \$1,025.00 has not been paid for October 2012. As a result, the landlord has suffered a loss of rent for October as the tenant continues to occupy the rental unit. The landlord is seeking an order of a possession and a monetary order for unpaid rent as a result.

Analysis

Based on the documentary evidence and the landlord's undisputed oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of Possession - I find that the tenant failed to pay the rent or dispute the 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 effective 2 days after service on the tenant.

Claim for unpaid rent – The landlord testified that \$550.00 in rent remains unpaid for September 2012, and \$1,025.00 remains unpaid for October 2012. The tenant continues to occupy the rental unit, however, has failed to pay rent. 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. As the tenant continues to occupying the unit, the landlord will not regain possession of the unit until after service of the order of possession. **I find** the landlord has met the burden of proof and has established a monetary claim of **\$1,575.00** for comprised of \$550.00 in unpaid rent for September 2012, and \$1,025.00 for unpaid rent for October 2012.

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

The landlord continues to hold the tenant's security deposit of \$512.50 which has accrued no interest to date.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$1,625.00** and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit which has accrued no interest as follows:

Amount owing for September 2012 rent	\$550.00
Amount owing for October 2012 rent	\$1,025.00
Filing fee	\$50.00
Subtotal	\$1,625.00
Less Security Deposit	(\$512.50)
TOTAL	\$1,112.50

Conclusion

I find that the landlord has proven his 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 \$1,625.00. **I authorize** the landlord to retain the full security deposit of \$512.50 in partial satisfaction of the claim, and I grant the landlord a monetary order under section 67 for the balance due of **\$1,112.50**. 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: October 22, 2012

Residential Tenancy Branch