



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "*Act*") seeking an order of possession for unpaid rent or utilities, a monetary order for unpaid rent or utilities, authorization to keep all or part of the security deposit, and to recover the filing fee.

An agent for the landlord (the "agent") appeared by conference call and gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and make submissions during the hearing.

As the tenant did not attend the hearing, service was considered. The agent testified that the Notice of Hearing package was served via registered mail to the tenant at the rental unit address on October 19, 2012. A registered mail receipt tracking number was provided during the hearing. The agent testified that the tenant remains in the rental unit. I find the tenant was served accordance with the *Act*.

Preliminary Matter

The agent stated that the tenant continues to occupy the rental unit and has since failed to pay rent for November 2012 in the amount of \$950.00 and requested to have that amount included in this application. I find that it is reasonable that the tenant would be aware that rent is due pursuant to the tenancy agreement, and therefore, find that such an amendment would not prejudice the tenant as no notice was given by the tenant. Based on the above, I amend the application from \$1,900.00 to \$2,850.00.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*?

Background and Evidence

A month to month tenancy began on January 16, 2012. Rent in the amount of \$950.00 is due on the first day of each month. The tenant paid a security deposit of \$475.00 which the landlord continues to hold.

Documentary evidence filed by the landlord indicates that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") dated September 7, 2012, in person on September 7, 2012. The effective date on the Notice is September 17, 2012. The Notice states that the tenant had five days to pay the rent in full or apply for dispute resolution or the tenancy would end 10 days from the service date. The tenant did not apply to dispute the notice to end tenancy or pay the full rent in full within five days from the date of service.

The agent testified that the tenant owes rent as follows:

Portion of August 2012 rent owing	\$475.00
Full October 2012 rent owing	\$950.00
Full November 2012 rent owing	\$950.00
TOTAL RENT OWING	\$2,850.00

The agent provided the Notice, tenancy agreement, and account ledger as evidence for this hearing.

Analysis

Based on the documentary evidence and the 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 full rent owing or dispute the Notice within 5 days after receiving the Notice. Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. As the tenant continues to reside in the rental unit and has failed to pay rent as required, **I grant** the landlord's request for an order of possession.

Claim for unpaid rent - The agent's request to amend the application for unpaid rent from \$1,900.00 to \$2,850.00 to include the unpaid rent for November 2012 was granted. Section 26 of the *Act* states the 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. **I find** the landlord has met the burden of proof and has established a monetary claim in the amount of \$2,850.00 in unpaid rent.

The landlord is holding a security deposit in the sum of \$475.00. The security deposit has accrued no interest to date. The landlord has succeeded with their application, therefore, **I grant** the landlord the recovery of the \$50.00 filing fee.

I find the landlord has established a total monetary amount of **\$2,900.00** comprised of \$2,850.00 in unpaid rent and the \$50.00 filing fee. **I authorize** the landlord to retain the full security deposit of **\$475.00** in partial satisfaction of the claim and **I grant** the landlord a monetary order pursuant to section 67 of the *Act* for the balance due of **\$2,425.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the landlord is entitled to an order of possession effective **two days** after service upon the tenants. 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 \$2,900.00. I authorize the landlord to retain the deposit \$475.00 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 of the *Act* for the balance due of **\$2,425.00**. 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: November 22, 2012

Residential Tenancy Branch