



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD 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, authorization to retain all or a portion of the security deposit, and to recover the filing fee.

The agent for the landlord (the "agent") and the male tenant appeared at the teleconference hearing and gave affirmed testimony. The hearing process was explained to both parties. During the hearing the parties were 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 tenant confirmed receipt of the evidence package of the landlord and that he had the opportunity to review the evidence prior to the hearing.

Issues to be Decided

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

Background and Evidence

The parties agreed that a fixed term tenancy began on May 1, 2011 and on April 30, 2012 reverted to a month to month tenancy. Rent was initially \$775.00 per month and due on the first day of each month. In May 2012, the landlord served a Notice of Rent Increase on the tenant, which increased the monthly rent by \$33.32 to \$808.32 effective September 1, 2012. The tenant did not dispute the rent increase. The tenant paid a security deposit of \$387.50 at the start of the tenancy.

The agent confirmed service of the 10 Day Notice for Unpaid Rent or Utilities (the "Notice") dated October 8 2012, by personal service on October 8, 2012 with an effective date of October 18, 2012. The tenant confirmed being served with the Notice

on October 8, 2012. The tenant did not dispute the Notice or pay the unpaid rent since being issued the 10 Day Notice.

The agent testified that rent differential of \$33.32 comprised of the difference between the original rent amount of \$775.00 and the increased amount as of September 1, 2012 of \$808.32 was not paid as follows:

Rent owing for September 2012	\$33.32
Rent owing for October 2012	\$33.32
Rent owing for November 2012	\$33.32
TOTAL RENT OWING	\$99.96

The tenant did not dispute that the amount of \$99.96 remained unpaid at the hearing, however, the tenant stated that as a portion of his rent was being paid by the government, he claimed he was not responsible for the unpaid portion of the rent. The tenant was asked if he contacted his worker or someone else in government about the unpaid rent. The tenant confirmed that he has not contacted anyone whether the unpaid rent was ever paid since being issued the Notice.

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 tenants failed to pay the rent or dispute the Notice within 5 days after receiving the Notice. The effective date of the Notice was October 18, 2012. The tenants are 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 tenants.

Claim for unpaid rent– The parties agreed that unpaid rent in the amount of \$99.96 remains outstanding. I reject the tenant's testimony that he was not responsible for the unpaid rent. The tenant should have followed up with his worker or someone else in government until he confirmed the unpaid rent had been paid or filed to dispute the Notice. I **find** that the tenant did neither. Therefore, I **find** that the tenants have breached a standard term of the tenancy agreement by failing to pay the full rent when it was due. The landlord has not received \$33.32 for the months of September, October and November 2012 and has suffered a loss of \$99.96. I **find** the landlord has met the burden of proof and has established a monetary claim of **\$99.96**.

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

The landlord is holding a security deposit of \$387.50 which was paid by the tenant at the start of the tenancy and has not accrued interest to date. I **authorize** the landlord to retain **\$149.96** of the security deposit comprised of unpaid rent in the amount of \$99.96 and the \$50.00 filing fee, leaving a security deposit balance of \$237.54.

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 tenants. 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 **\$149.96**. I authorize the landlord retain \$149.96 of the security deposit in full satisfaction of the claim.

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: December 05, 2012

Residential Tenancy Branch