



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “*Act*”) by the landlord for an order of possession for unpaid rent and utilities, and for a monetary order for unpaid rent and utilities.

The landlord, an assistant for the landlord and the tenant appeared at the teleconference hearing and gave affirmed testimony. 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 matters before me.

The tenant disputed being served with the Notice of a Dispute Resolution Hearing (the “Hearing Notice”) by registered mail. The tenant claimed that she called into the hearing because three days before hearing, she received a copy of the Hearing Notice under her door. The landlord disputed the tenant’s testimony. The landlord stated that he served the tenant via registered mail on February 5, 2013 with the evidence and Hearing Notice and provided a registered mail tracking number and receipt with the tracking number in evidence. The tenant alleged that the landlord has been stealing her mail and that she has contacted the police but failed to provide any evidence such as a police file number to support her allegation. Section 90 of the *Act* indicates that documents served by registered mail are deemed served five days after they are mailed. I find that the tenant was duly served in accordance with the *Act* on February 10, 2013.

Preliminary and Procedural Matters

At the outset of the hearing, the landlord withdrew his application for unpaid utilities. As a result, the landlord is at liberty to re-apply for unpaid utilities. However, I note that withdrawing this portion of his application does not extend any time limits under the *Act*.

The hearing continued with consideration of the landlord's application for an order of possession for unpaid rent, and for a monetary order for unpaid rent.

The landlord requested to amend his application down from \$3,190.00 to \$1,900.00 for \$950.00 in unpaid January 2013 rent, and \$950.00 in unpaid February 2013 rent. As the landlord's request does not prejudice the tenant, the landlord was permitted to amend his request down to \$1,900.00.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent under the *Act*?
- Is the landlord entitled to a monetary order for unpaid rent under the *Act*, and if so, in what amount?

Background and Evidence

The parties agreed that a month to month tenancy began on April 15, 2011. Monthly rent in the amount of \$950.00 is due on the first day of each month. The parties disputed whether utilities were included in the monthly rent. The landlord stated that utilities were not included in the monthly rent, whereas the tenant stated that utilities were included in the monthly rent. The parties agreed that a security deposit of \$475.00 was paid by the tenant and that the landlord continues to hold the security deposit of \$475.00.

The landlord confirmed service of the 10 Day Notice for Unpaid Rent or Utilities, (the "10 Day Notice"), dated January 21, 2013 by posting to the tenant's door on January 21, 2013, which the tenant stated she received on January 23, 2013. The 10 Day Notice was in the amount of \$950.00 in unpaid rent due January 1, 2013 and had an effective vacancy date of January 21, 2013 which automatically corrects under the *Act* to February 2, 2013. The landlord stated that the tenant failed to pay any rent for January 2013. The tenant testified that she did not dispute the 10 Day Notice but did pay \$548.00 in rent on December 28, 2012 for January 1, 2013 rent. The landlord disputed that the tenant made any such payment. The tenant stated that she had a receipt to prove that she paid \$548.00 on December 28, 2012 but did agree that she did not pay the remaining \$402.00 owing for January 2013 rent. The tenant also testified that she has not paid February 2013 rent of \$950.00 due to the landlord allegedly stealing her mail.

The tenant was asked if she contacted the police about her allegations and received a file number. The tenant stated that she has called the police but was unable to provide any police file numbers as evidence during the hearing.

The tenant claimed that she had a verbal agreement with the landlord that the landlord would not enforce the 10 Day Notice if she paid some of the rent. The landlord disputed that any such agreement was made and requested an order of possession as soon as possible.

The landlord has applied for a monetary order in the amount of \$1,900.00 comprised of \$950.00 unpaid January 2013 rent, and \$950.00 unpaid February 2013 rent.

The landlord provided a copy of the 10 Day Notice, registered mail receipt and correspondence in evidence for this proceeding.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of Possession – Based on the tenant's own testimony, I find that the tenant failed to pay at least \$402.00 of January 2013 rent due on January 1, 2013 and failed to pay all \$950.00 of February 2013 rent due February 1, 2013. The tenant stated that she did not dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice and did not pay the full amount of rent owing for January 2013 rent. The tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice which automatically corrects under the *Act* to February 2, 2013. Accordingly, **I grant** the landlord an order of possession effective **2 days** after service on the tenant.

Claim for unpaid rent– The parties disputed the amount of rent owing. The tenant claims that she has a receipt for \$548.00 dated December 28, 2012 towards January 2013 rent. The landlord disputed that he received any money from the tenant towards January 2013 or February 2013 rent. The tenant did agree that she owes \$402.00 in unpaid rent for January 2013 and \$950.00 for February 2013 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. 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 **I find** the landlord has established a monetary claim of **\$1,352.00** comprised of \$402.00 that the tenant agrees is unpaid for January 2013 rent, and \$950.00 for unpaid February 2013 rent. **I dismiss** the landlord's claim towards the remaining \$548.00 in unpaid January 2013 **with leave to reapply** as I find that it would be prejudicial to the landlord to adjourn the hearing for further evidence as the tenant did not dispute the 10 Day Notice and the tenancy ended in accordance with the *Act*.

Monetary Order – **I grant** the landlord a monetary order pursuant to section 67 of the *Act* in the amount of **\$1,352.00**. 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 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 monetary claim of \$1,352.00. I grant the landlord a monetary order under section 67 in the amount of \$1,352.00. 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: February 27, 2013

Residential Tenancy Branch

