



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, to keep all or part of the security deposit, and to recover the filing fee.

The landlord appeared at the teleconference hearing and gave affirmed testimony. The landlord was advised of the hearing process and was given the opportunity to ask questions about the hearing process during the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice") was considered. The landlord testified under oath that the Notice was served on the tenant in person on March 5, 2012 at the rental unit at approximately 11:00 a.m. and that the upstairs tenant was a witness. I find the tenant was sufficiently served under the *Act*.

A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

The landlord stated that the tenant vacated the rental unit on or about March 17, 2013, however, is still seeking an order of possession in case the tenant attempts to enter the rental unit.

During the hearing, the landlord requested to reduce his monetary claim from the original claim of \$2,648.64 to \$2,240.00. As a reduction in the monetary claim does not

prejudice the tenant, the landlord was permitted to reduce his monetary claim during 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 under the *Act*, and if so, in what amount?

Background and Evidence

A month to month tenancy agreement began on November 1, 2011. Monthly rent in the amount of \$650.00 was due on the first day of each month. A security deposit of \$325.00 was paid by the tenant at the start of the tenancy, which the landlord continues to hold.

The landlord has claimed \$2,240.00 comprised of the following:

Item #	Description	Amount
1	Unpaid portion of December 2012 rent	\$290.00
2	Unpaid January 2013 rent	\$650.00
3	Unpaid February 2013 rent	\$650.00
4	Unpaid March 2013 rent	\$650.00
TOTAL		\$2,240.00

The landlord submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated February 24, 2013. The landlord stated that he personally served the tenant with the 10 Day Notice at the rental unit on February 24, 2013 stating that \$1,873.64 in rent was owing as of February 1, 2013 and that the tenant did not dispute the notice or pay rent within 5 days of receiving the 10 Day Notice. The effective vacancy date on the 10 Day Notice is listed as March 6, 2013.

The landlord stated that the tenant failed to pay \$290.00 of December 2012 rent, and paid no rent for the months of January 2013, February 2013, or March 2013 at \$650.00 per month for a total of \$2,240.00 owing in unpaid rent.

The tenant vacated the rental unit on or about March 17, 2013, however, the landlord is still seeking an order of possession in case the tenant attempts to enter the rental unit. The landlord stated that the tenant did not provide a forwarding address and is requesting to retain the security deposit to offset the unpaid rent.

Analysis

Based on the documentary evidence and the undisputed testimony of the landlord, and on the balance of probabilities, I find the following.

Order of possession – The tenant was served with a 10 Day Notice on February 24, 2013. The tenant did not dispute the 10 Day Notice and did not pay the amount of unpaid rent owing within 5 days after being served with the 10 Day Notice. Pursuant to section 46 of the *Act*, **I find** the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice which was March 6, 2013. Although the landlord stated the tenant has vacated the rental unit, the landlord is concerned that he may return. Given the above and taking into account the landlord's application for an order of possession, I find that the landlord is entitled to an order of possession effective **two (2) days** after service on the tenant. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

Landlord's claim for unpaid rent – The landlord testified that the tenant failed to pay \$290.00 of December 2012 rent, and paid no rent for the months of January 2013, February 2013, or March 2013 at \$650.00 per month for a total of \$2,240.00 owing in unpaid rent. Section 26 of the *Act* states that 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 \$650.00 rent is due on the first day of each month. I find the landlord has met the burden of proof and **I find** the landlord has established a monetary claim of **\$2,240.00** comprised of unpaid rent.

As the landlord's application had merit, **I grant** the landlord the recovery of the filing fee in the amount of **\$50.00**.

Monetary Order – **I find** that the landlord has established a total monetary claim in the amount of **\$2,290.00** comprised of \$2,240.00 in unpaid rent, and the \$50.00 filing fee. The tenant's security deposit of \$325.00 has accrued no interest since the start of the tenancy, which the landlord continues to hold. **I authorize** the landlord to retain the tenant's full security deposit of \$325.00 in partial satisfaction of the claim. **I grant** the

landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing in the amount of **\$1,965.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I grant the landlord an order of possession effective **two (2) days** after service on the tenant. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

I find that the landlord has established a total monetary claim of \$2,290.00. I authorize the landlord to retain the tenant's full security deposit of \$325.00 in partial satisfaction of the claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing in the amount of \$1,965.00. This order must be served on the tenant and 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: March 27, 2013

Residential Tenancy Branch

