



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Schiffer Properties Corp
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR 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, 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 and evidence was served via registered mail to the tenant at the rental unit address on May 17, 2013. A registered mail receipt tracking number was provided during the hearing. The agent testified that the tenant remains in the rental unit. The agent confirmed via the online postal tracking website that the registered mail package was signed for by the tenant and successfully delivered on May 23, 2013. Subsequent evidence was posted to the tenant's door. 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 since filing his application the tenant has paid all but \$35.00 for May 2013 rent, and has since failed to pay \$252.59 of June 2013 rent. The landlord issued a receipt for "use and occupancy" for the June 2013 partial rent payment received. The agent requested to reduce the monetary claim from the original amount of \$615.00 to \$287.59, comprised of \$35.00 owing for May 2013 rent and \$252.59 owing for June 2013 rent. The landlord is also seeking the recovery of the filing fee.

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 fixed term tenancy began on March 15, 2013. Monthly rent in the amount of \$615.00 is due on the first day of each month. A security deposit of \$307.50 was paid at the start of the tenancy.

Documentary evidence filed by the landlord indicates the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") indicating that \$335.00 in rent was owing as of May 1, 2013. The effective vacancy date on the Notice is May 13, 2013. The 10 Day 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 agent stated that he served the tenant by posting the 10 Day Notice to the tenant's door on May 2, 2013. 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. A \$300.00 payment was received late in May 2013 which left \$35.00 owing in rent for May 2013.

On June 2, 2013, the landlord issued a second 10 Day Notice, however, the details of that 10 Day Notice have not been included as they are moot, given that first 10 Day Notice was not disputed and full rent was not paid within five days of the tenant being served with that Notice. The agent stated that he received a partial payment towards June 2013 rent leaving an amount owing for June 2013 in the amount of \$252.59. The agent stated that a receipt for "use and occupancy" was given after the partial payment was received for June 2013 rent. The agent clarified that \$35.00 owing for May 2013 plus the \$252.59 owing for June 2013 results in an unpaid rent balance of \$287.59.

The agent stated that he would like to give the tenant extra time to find a new residence. As a result, the agent requested an order of possession effective June 20, 2013 versus a "two-day" order of possession.

The agent provided two 10 Day Notices, the tenancy agreement, the tenancy agreement addendum, and other correspondence in evidence for this proceeding.

Analysis

Based on the documentary evidence and the undisputed 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 10 Day Notice within 5 days after receiving the 10 Day Notice. Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice. The effective vacancy date of the 10 Day Notice automatically corrects to May 15, 2013 as the notice was posted to the tenant's door on May 2, 2013 and is deemed served three days later under the *Act*. Accordingly, **I grant** the agent's request for an order of possession effective on **June 20, 2013 at 1:00 p.m.**

Claim for unpaid rent - The agent testified that \$35.00 remains owing for May 2013 rent and \$252.59 remains owing for June 2013. Monthly rent is \$615.00 due on the first day of each month. Pursuant to section 26 of the *Act* 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 in the amount of \$615.00 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 \$287.59 in unpaid rent comprised of \$35.00 for May 2013 and \$252.59 for June 2013. The landlord did not request or apply to retain the tenant's security deposit.

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

I find the landlord has established a total monetary amount of **\$337.59** comprised of \$287.59 in unpaid rent and the \$50.00 filing fee. **I grant** the landlord a monetary order pursuant to section 67 of the *Act* in the amount of **\$337.59**. 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 **June 20, 2013 at 1:00 p.m.** This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

I find the landlord has established a total monetary amount of **\$337.59** comprised of \$287.59 in unpaid rent and the \$50.00 filing fee. **I grant** the landlord a monetary order pursuant to section 67 of the *Act* in the amount of **\$337.59**. 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: June 12, 2013

Residential Tenancy Branch