



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 an Application for Dispute Resolution under the *Residential Tenancy Act* (the “*Act*”) by the landlord for an order of possession for unpaid rent, for a monetary order for unpaid rent, for authorization to retain all or part of the security deposit, and to recover the cost of the filing fee.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”) was considered. The landlord testified that he served the Notice of Hearing and evidence by registered mail on May 28, 2013 addressed to the tenant at the rental unit address. A registered mail tracking number was submitted in evidence. The landlord stated that on June 2, 2013 he attended the rental unit and was able to confirm that the tenant still had his personal items in the rental unit. On June 3, 2013 the landlord stated that the registered mail package was returned as the tenant failed to claim the package. On June 3, 2013 the landlord stated he received an Interac E-Transfer payment from the tenant for late May 2013 in the amount of \$425.00 which the landlord stated supports that the tenant was still occupying the rental unit. Based on the above, I accept that the tenant was sufficiently served in accordance with the *Act*.

Preliminary Matters

The landlord stated that since filing his application, the tenant paid May 2013 rent late on June 3, 2013 in the amount of \$425.00. As a result, the landlord requested to reduce his monetary claim by \$425.00 and is seeking only June 2013 unpaid rent and the filing fee as a result.

The landlord also requested to amend his claim to include late fees, however, failed to provide evidence supporting that late fees were agreed to by the parties. The landlord's request to add late fees to the request was denied as increasing his monetary claim during the hearing when the tenant was not present would be prejudicial to the tenant. In reaching this decision I have also considered the lack of evidence supporting that late fees had been agreed upon by the parties as the landlord did not submit the tenancy agreement Addendum in evidence.

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

The landlord stated that a month to month tenancy agreement began on July 1, 2012. A copy of the tenancy agreement was submitted in evidence. Monthly rent in the amount of \$425.00 was due on the first day of each month. A security deposit of \$212.50 was paid by tenant at the start of the tenancy which the landlord continues to hold.

The landlord confirmed service of the 10 Day Notice for Unpaid Rent or Utilities dated May 4, 2013, (the "10 Day Notice"), by his wife posting the 10 Day Notice to the tenant's door on May 4, 2013 at 12:30 p.m., which the landlord witnessed. The 10 Day Notice indicates that \$425.00 was due on May 1, 2013 and had an effective vacancy date of May 14, 2013. The landlord stated that the tenant failed to pay any rent for May 2013 until June 3, 2013 when he received late rent for May 2013 in the amount of \$425.00 by Interact E-Transfer. The landlord stated that the tenant did not dispute the 10 Day Notice or pay the rent within 5 days as per the 10 Day Notice.

The landlord testified that the tenant has since failed to pay any rent for June 2013 and is therefore seeking June 2013 plus the filing fee, and an order of possession. A copy of the 10 Day Notice was submitted in evidence.

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 – The 10 Day Notice was dated May 4, 2013 and posted to the tenant's door on May 4, 2013. The deemed service date is three days later under the *Act* which makes the 10 Day Notice deemed served on May 7, 2013. The effective vacancy date is listed as May 14, 2013 which automatically corrects under the *Act* to May 17, 2013. Based on the undisputed testimony of the landlord, **I find** the tenant failed to pay the rent for May 2013 or dispute the 10 Day Notice **within 5 days** after receiving the 10 Day Notice. Therefore, the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the corrective effective date of the 10 Day Notice which is May 17, 2013. Accordingly, **I grant** the landlord an order of possession effective **2 days** after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

Claim for unpaid rent– The landlord testified that rent for May 2013 was eventually paid by the tenant on June 3, 2013, however, rent for June 2013 in the amount of \$425.00 remains unpaid. 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 occupy the rental 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 **\$425.00** comprised of unpaid June 2013 rent.

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

The tenant's security deposit of \$212.50 has accrued no interest since July 1, 2012, which the landlord continues to hold.

Monetary Order - I find that the landlord has established a total monetary claim of **\$475.00** comprised of \$425.00 in unpaid rent and the \$50.00 filing fee. **I authorize** the landlord to retain the full security deposit of \$212.50 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 **\$262.50**. 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 find that the landlord has proven his claim and is, therefore, 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 total monetary claim of \$475.00. I authorize the landlord to retain the full security deposit of \$212.50 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 \$262.50. 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: June 19, 2013

Residential Tenancy Branch