



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNDC FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord confirmed their intent on seeking money owed or compensation for damage or loss under the act regulation or tenancy agreement, by writing "*Owes 1 month rent \$986.00 + June rent estimated*".

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as he clearing indicated his intention of seeking to recover the payment for June rent Therefore I amend their application, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included a copy of the 10 Day Notice to end tenancy for unpaid rent issued on May 2, 2013 and a proof of service document for the 10 Day Notice. The Tenant acknowledged receipt of the Landlord's evidence.

The parties confirmed they entered into a verbal tenancy agreement that began in October 2006. Rent is payable on the first of each month in the amount of \$986.00 and in October 2011 the Tenant paid \$425.00 as the security deposit.

The Landlord testified that when the Tenant failed to pay the May 1, 2013, rent a 10 Day Notice was posted to the Tenant's door on May 2, 2013, in the presence of a witness. The Landlord also took photos of the 10 Day Notice on the Tenant's door.

The Tenant denied receiving the 10 Day Notice until he received a copy with the Landlord's application for dispute resolution in the middle of May 2013. He acknowledged that he has not paid May or June 2013 rent but argued that he should be credited for overpayments made in the past. He argued that the Landlord refuses to give him receipts for cash payments so he decided he would stop paying rent until he agreed to give him receipts. He advised they were at dispute resolution a few months ago and during that hearing the Landlord was told he had to give receipts.

The Landlord indicated the Tenant was not telling the truth. He argued that back in March 2013 he decided to give the Tenant a second chance if he agreed to pay the rent on time. He did so in April but failed to continue for May. As of today's date the Tenant has not paid May or June rents so the Landlord wants to proceed with getting the orders.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

Notwithstanding the Tenant's argument that he did not receive the 10 Day Notice until mid May, the fact remains that he did not pay the rent owed in full within five days. If in fact he did not receive the Notice until May 13, 2013, the effective date of the Notice would be **May 23, 2013**, in accordance with section 46 of the Act. The Tenant did not pay the rent and did not dispute the Notice, therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent of \$986.00 which was due May 1, 2013. I find there is insufficient evidence to prove the Tenant prepaid or overpay past rent. Therefore, I find

the Tenant failed to pay rent in accordance with the tenancy agreement which is a breach of section 26 of the Act. Accordingly, I award the Landlord a Monetary Award for unpaid rent of **\$986.00**.

As noted above this tenancy ended **May 23, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy and/or loss of rent for June 2013, not rent. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and they will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of June 2013, in the amount of **\$986.00**.

The Landlord has been successful with their application; therefore, I award recovery of the **\$50.00** filing fee

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$2,022.00** (\$986.00 + \$986.00 + \$50.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision 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 10, 2013

Residential Tenancy Branch

