



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on August 29, 2013, by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; for 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 Tenants for this application.

The Landlord submitted testimony that he personally served the Tenant D.C. with copies of the Landlord's application for dispute resolution and Notice of dispute resolution hearing, on August 29, 2013, at the convenience store. Based on the submissions of the Landlord I find the Tenant, D.C., was served notice of this proceeding in accordance with section 89 of the Act; therefore I proceeded in the Tenant's absence.

Section 88(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. In addition to the Order of Possession, the Landlord applied for a monetary Order which requires that the Landlords serve **each** respondent as set out under *Residential Tenancy Rules of Procedures*.

In this case only one of the two Tenants has been personally served with the Notice of hearing documents. Therefore, I find that the request for a monetary Order against both Tenants must be amended to include only the male Tenant, D.C., who has been properly served with Notice of this Proceeding. As the second Tenant, C.M. has not been properly served the Application for Dispute Resolution as required the monetary claim against the female Tenant is dismissed without leave to reapply.

The Landlords have requested an Order of possession against both Tenants. Section 89(2) of the Act determines that the Landlords may leave a copy of the Application for Dispute Resolution related to a request for an Order of possession with an adult who apparently resides with the Tenant. As both respondents are Tenants I have determined that both parties have been sufficiently served with the portion of the Application for Dispute Resolution relating to section 55 of the Act, requesting an order of possession.

Issue(s) to be Decided

1. Should the Landlord be granted an Order of Possession?
2. Should the Landlord be granted a Monetary Order?

Background and Evidence

The Landlord testified that the Tenants entered into a month to month tenancy that began on July 18, 2013. Rent was to be paid on the first of each month in the amount of \$800.00. On September 5, 2013, the Landlord received a \$400.00 cheque from Social Assistance as payment for the security deposit.

The Landlord submitted evidence which indicates the Tenants were required to pay \$400.00 rent for the month of July 2013. The Tenant's made partial payments towards rent and as of August 13, 2013 there was \$500.00 outstanding so the Landlord personally served D.C. with a 10 Day Notice to end tenancy for unpaid rent. Since that date the Landlord received \$300.00 on August 29, 2013 and \$400.00 on September 4, 2013, rent leaving a balance owing of \$1,400.00 as of October 1, 2013. The Tenants continue to occupy the property so the Landlord is seeking the Order of Possession for as soon as possible and the monetary order for unpaid rent.

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.

In this case the Tenants received the 10 Day Notice on August 13, 2013, and the effective date of the Notice is **August 23, 2013**, in accordance with section 46 of the Act. The Tenants did not pay the rent in full within five days and did not dispute the Notice, therefore, the Tenants are 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 \$500.00 which was due August 1, 2013. The Tenants made payments of \$300.00 on August 29, 2013, and \$400.00 on September 4, 2013, which paid off the August arrears after the five day period. Accordingly, I find the August rent to be paid in full and \$200.00 was paid towards use and occupancy of the rental unit for September 2013.

As noted above this tenancy ended **August 23, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for September and October 2013, not rent. The Tenants are 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 clean the unit and find replacement tenants.

Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire months of September and October 2013, (2 x \$800.00 less the prepayment of \$200.00) in the amount of **\$1,400.00**.

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

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Use & Occupancy and Loss of Rent	\$1,400.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,450.00
LESS: Security Deposit \$400.00 + Interest 0.00	<u>-400.00</u>
Offset amount due to the Landlord	<u>\$1,050.00</u>

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 **\$1,050.00**. This Order is legally binding and must be served upon the Tenant, D.C. 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: October 09, 2013

Residential Tenancy Branch

