



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "*Act*") to obtain an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to retain all or part of the security deposit, and to recover the filing fee.

The landlord and the female tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenant confirmed that she received the evidence of the landlord and had the opportunity to review the evidence prior to the hearing. The tenant stated that no evidence was submitted in response to the landlord's application. I find the tenants were served with evidence in accordance with the *Act*.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

A month to month tenancy began on February 1, 2012. Monthly rent in the amount of \$750.00 was due on the first day of each month and was subsequently reduced to \$700.00 by the mutual agreement of the parties as of March 1, 2012. The tenants paid a

security deposit of \$375.00 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 (the "10 Day Notice") dated May 23, 2013, by personally serving the female tenant on May 23, 2013. The 10 Day Notice indicates an effective date of June 3, 2013 and indicates that the tenants owed \$2,450.00 in unpaid rent. The tenants did not dispute the 10 Day Notice and did not pay the full amount of rent owed within five days of receiving the 10 Day Notice.

The parties agreed that the tenants owe \$2,650.00 in unpaid rent as follows:

- \$350.00 rent owing for February 2013
- \$700.00 rent owing for March 2013
- \$700.00 rent owing for April 2013
- \$700.00 rent owing for May 2013
- \$200.00 rent owing for June 2013

The landlord stated that she was not seeking a two day order of possession and was willing to have the order of possession effective July 31, 2013 at 1:00 p.m. The landlord reminded the tenant that rent for July 2013 would be due on July 1, 2013 but that she was not reinstating the tenancy and was only giving the tenants another month as a gesture of good faith but expects rent for July 2013 to be paid.

Analysis

Order of possession - I find that the tenants failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The effective vacancy date of the 10 Day Notice was June 3, 2013. Pursuant to section 46 of the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice. The tenants continue to occupy the rental unit. Therefore, **I grant** the landlord an order of possession effective **July 31, 2013 at 1:00 p.m.** as requested by the landlord. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

Claim for unpaid rent – The parties agreed that \$2,650.00 in unpaid rent remains owing by the tenants as described above. 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 tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent 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 of **\$2,650.00** for unpaid rent.

The landlord is holding a security deposit of \$375.00 which was paid by the tenants at the start of the tenancy. The security deposit has accrued \$0.00 in interest since the start of the tenancy.

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

Monetary Order – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit.

Unpaid portion of February 2013 rent	\$350.00
Unpaid March 2013 rent	\$700.00
Unpaid April 2013 rent	\$700.00
Unpaid May 2013 rent	\$700.00
Unpaid June 2013 rent	\$200.00
Filing fee	\$50.00
Subtotal	\$2,700.00
<i>(Less tenants' security deposit including \$0.00 interest)</i>	<i>-\$375.00)</i>
TOTAL BALANCE OWING TO THE LANDLORD	\$2,325.00

Conclusion

I find that the landlord has proven their claim and is, therefore, entitled to an order of possession effective July 31, 2013 at 1:00 p.m. as requested. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

I find that the landlord has established a total monetary claim of **\$2,700.00** as indicated above. I authorize the landlord retain the tenants' full security deposit of \$375.00 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance owing of **\$2,325.00**. 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 26, 2013

Residential Tenancy Branch