



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord 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, and to recover the filing fee.

An agent for the landlord (the “agent”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent 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 tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice”) was considered. The agent testified that he served the tenants with the Notice on July 11, 2013 by registered mailed. The agent provided a tracking number as evidence during the hearing. The agent stated that he also advised the tenants verbally the day before the hearing of the date and time of the dispute resolution hearing. Based on the undisputed testimony of the agent and the tracking number provided, I find the tenants were duly served on the fifth day after mailing, in accordance with the *Act*, which would be July 16, 2013.

Preliminary and Procedural Matters

The agent testified that since filing the application on July 2, 2013, the tenants paid all but \$25.00 of June 2013 rent, and owe full July 2013 rent of \$750.00 and full August 2013 rent of \$750.00 as the tenants remain in the rental unit. The agent requested to amend his monetary claim to include August 2013 loss of rent for a total of \$1,525.00 comprised of \$25.00 unpaid rent for June 2013, \$750.00 unpaid rent for July 2013, and \$750.00 for loss of August 2013 rent. I find that it is reasonable that the tenants would know that rent is due on the date it is due in accordance with the tenancy agreement and that accordingly, such an amendment would not be prejudicial to the tenants.

Therefore, I grant the agent's request to amend the landlord's monetary claim to \$1,525.00, plus the filing fee which was requested verbally during the hearing.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to a monetary order for unpaid rent, and if so, in what amount?

Background and Evidence

The agent affirmed that a month to month tenancy agreement began on March 1, 2013. Monthly rent in the amount of \$750.00 is due on the first day of each month. The tenants did not pay a security deposit but did pay a pet damage deposit of \$375.00, which the landlord continues to hold.

The agent confirmed service of the 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") dated June 13, 2013 by personal service to the tenants on June 13, 2013 at the rental unit. The landlord submitted a copy of the 10 Day Notice in evidence. The effective vacancy date listed on the 10 Day Notice is June 22, 2013 and indicates that \$375.00 remained owing for June 2013 rent.

The agent testified that the tenants paid \$375.00 towards June 2013 rent on or about June 9, 2013 and then two weeks later, paid another \$350.00, leaving a balance owing for June 2013 rent in the amount of \$25.00. The agent stated that the tenants have failed to pay July 2013 and August 2013 rent at \$750.00 per month for a total loss of \$1,500.00 for the months of July 2013 and August 2013.

Analysis

Based on the documentary evidence and the undisputed testimony of the agent provided during the hearing, and on the balance of probabilities, I find the following.

Order of Possession - I find that the tenants failed to pay the rent or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice, and that the tenants are conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which automatically corrects under the *Act* to June 23, 2013. The tenants remain in the rental unit. Therefore, I **grant** the landlord an order of possession effective two (2) days after service on the tenants.

Claim for unpaid rent and loss of rent – The agent testified that \$25.00 remains owing for June 2013, \$750.00 remains owing for July 2013 and \$750.00 remains owing for August 2013. Pursuant to section 26 of the *Act* tenants 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. The tenants continue to occupy the rental unit. The landlord will not regain possession of the unit until after service of the order of possession and has incurred a loss of rent for August 2013 as a result. Therefore, **I find** the landlord has met the burden of proof to support a monetary claim of **\$1,525.00** comprised of \$25.00 for June 2013 rent owing, \$750.00 for July 2013 rent owing, and \$750.00 for loss of August 2013 rent.

As the landlord has succeeded with their application, **I grant** the landlord the 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' pet damage deposit which has accrued \$0.00 in interest as follows:

Unpaid portion of June 2013 rent	\$25.00
Unpaid July 2013 rent	\$750.00
Loss of August 2013 rent	\$750.00
Filing fee	\$50.00
Subtotal	\$1,575.00
<i>Less Tenants' Pet Damage Deposit of \$375.00</i>	<i>-(\$375.00)</i>
TOTAL AMOUNT OWING TO LANDLORD	\$1,200.00

I authorize the landlord to retain the tenants' pet damage deposit of \$375.00 in partial satisfaction of the total amount owing by the tenants to the landlord as indicated in the above table.

Conclusion

I find that the landlord has proven their claim and is, therefore, entitled to an order of possession effective **two (2) days** after service upon the tenants. 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 \$1,575.00 as indicated above. I authorize the landlord to retain the full pet damage deposit of \$375.00 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$1,200.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

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: August 06, 2013

Residential Tenancy Branch

