



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GATEWAY PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Preliminary Issues

At the outset of this proceeding the Landlord advised that he made a clerical error in the details of the dispute on his application where he wrote rent was \$995.00. The amount claimed includes the rent of \$1,095.00 as supported by the tenancy agreement and the 10 Day Notice provided in his evidence. He requested that the application be amended to ensure the amount awarded was based on monthly rent of \$1,095.00.

Based on the aforementioned I accept that the Landlord made a clerical error when completing the application, and amending this error would not prejudice the Tenant as the amount claimed on the application is enough to cover the different. The Tenant signed the tenancy agreement and therefore is aware of what the monthly rent is and would not be prejudiced by this amendment request. Therefore, I amend the application to show the claim is for \$1,095.00 July rent and \$1,095.00 for loss of rent for August 2013, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 18, 2013, by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for unpaid rent; to keep the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord submitted documentary evidence which indicates the Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on July 19, 2013, by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find the Tenant is deemed served notice of this proceeding on July 24th, 2013, five days after it was mailed, in accordance with section 90 of the Act. Therefore, I proceeded in the Tenant's absence.

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 submitted documentary evidence which included, among other things, copies of: two pages of the tenancy agreement; Canada Post receipts; complaint letters issued about the Tenant; and numerous 10 Day Notices for unpaid rent with the most recent notice issued on July 2, 2013.

The parties entered into a written fixed term tenancy agreement that began on September 16, 2012, and is set to expire on August 31, 2013. Rent is payable on the first of each month in the amount of \$1,095.00 and on September 14, 2012, the Tenant paid \$547.50 as the security deposit.

The Landlord testified that when the Tenant failed to pay the July 1, 2013, rent of \$1,095.00, he placed a 10 Day Notice on his mailbox on July 2, 2013 for the unpaid rent and the \$25.00 late payment fee. He filed and served his hearing documents in July and then on August 19, 2013, received a payment of \$1,130.00 for occupation of the unit. The Landlord requested to proceed with the application and requested to recover late payment fees of \$25.00. The Landlord read into evidence section #10.00 of the tenancy agreement which provides for late payment charges.

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 Tenant is deemed to have received the 10 Day Notice on July 5, 2013, three days after it was posted to his mailbox, and the effective date of the Notice is **July 15, 2013**, in accordance with section 90 of the Act.

The Tenant did not pay the rent within the required five days 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 \$1,095.00 and \$25.00 late payment fee which was due July 2, 2013. Payment of \$1,130.00 for occupation was received on August 19, 2013, leaving a credit balance on the Tenant's account of \$10.00. Accordingly, I dismiss the Landlord's claim for July rent and late payment fees, without leave to reapply.

As noted above this tenancy ended **July 15, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for August 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 August 2013, in the amount of **\$1,085.00** (\$1,095.00 - \$10.00 credit balance).

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 Tenant's security deposit plus interest as follows:

Loss of August Rent	\$1,085.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,135.00
LESS: Security Deposit \$547.50 + Interest 0.00	<u>-547.50</u>
Offset amount due to the Landlord	<u>\$ 587.50</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 **\$587.50**. 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: August 22, 2013

Residential Tenancy Branch

