



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALDERGROVE KINSMEN HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNDC FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord indicated that she would like to request compensation for August 2013 rent because at the time she completed her application for dispute resolution on the internet she was not aware that the hearing would be scheduled at the end of August 2013. The Tenant is still residing in the rental unit and has not paid the past due rent and has not paid the August rent.

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. The Tenant ought to know that if she occupies the rental unit she must pay rent in accordance with the tenancy agreement that she entered into on May 25, 2009. Therefore I amend the application to include the request for use and occupation for August rent, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 22, 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 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 25, 2013, by registered mail. Canada Post receipts were provided in the Landlord's evidence. The Landlord also provided affirmed testimony that a second copy of all documents was placed inside the Tenant's locked mailbox on July 25, 2013. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding, in accordance with the Act; and I proceeded in the Tenant's absence.

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 July 4, 2013, the tenancy agreement; and a tenant ledger.

The evidence supports that the parties entered into a tenancy agreement that began on June 1, 2009 listing market value rent as being \$1,400.00. The Tenant's rent is subsidized based on her income and is currently payable on the first of each month in the amount of \$454.00. On May 25, 2009, the Tenant paid \$600.00 as the security deposit based on market value rent.

The Landlord submitted a written statement that indicated that when the Tenant failed to pay her accumulated unpaid rent, as previously agreed, a 10 Day Notice was posted to the Tenant's door on July 4, 2013 demanding \$2,281.00 that was due as of July 1, 2013. A second copy was placed inside the Tenant's locked mailbox.

The Landlord advised that she found a money order in the office when she returned from holidays on August 22, 2013, in the amount of \$1,100.00 which leaves a balance owing of \$1,181.00 plus August rent of \$454.00 for a total owing of \$1,635.00. She wishes to proceed with her request for an Order of Possession and a Monetary Order.

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 7, 2013, three days after it was posted to her door, and the effective date of the Notice is **July 17, 2013**, in accordance with section 90 of the Act. The Tenant did not pay the rent in full 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 \$1,181.00 (\$2,281.00 - \$1,100.00) which was due July 1, 2013. The Tenant failed to pay rent the balance due in accordance with the tenancy agreement which I find to be a breach of section 26 of the Act. Accordingly, I award the Landlord a Monetary Award for unpaid rent of **\$1,181.00**.

As noted above this tenancy ended **July 17, 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 **\$454.00**.

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

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

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 **\$1,685.00** (\$1,181.00 + \$454.00 + \$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: August 29, 2013

Residential Tenancy Branch

