



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This is an application filed by the Landlord for an order of possession and a monetary order for unpaid rent and utilities, to keep all or part of the security and pet damage deposits and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The Tenant did not submit any documentary evidence. As both parties have attended and have confirmed receipt of the Landlord's notice of hearing and submitted documentary evidence, I am satisfied that both parties have been properly served.

The Landlord withdrew his monetary claim of \$1,400.00 for the pet damage deposit. As such, no further action is required for this portion of the claim.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?
Is the Landlord entitled to a monetary order?
Is the Landlord entitled to retain the security deposit?

Background and Evidence

Both parties confirmed that the Tenancy began on May 15, 2013 and that there is a signed tenancy agreement that neither party has a copy of. Both parties agreed that the monthly rent was \$2,800.00 and that a \$1,400.00 security deposit was paid.

Both parties confirmed that the Landlord served the Tenant with a 10 day notice to end tenancy dated June 29, 2013 for unpaid rent in person. The Landlord has submitted a proof of service document which states that the Tenant signed a receipt in

acknowledgment of receiving the notice on June 29, 2013. The notice states that the Tenant failed to pay \$1,400.00 in rent that was due on June 1, 2013. The notice also shows that the effective date of the notice to be July 9, 2013. The Tenant stated that the notice was not for rent, but for the unpaid \$1,400.00 pet damage deposit that he states was waived by the Landlord. The Landlord disputes this. The Tenant has confirmed in his direct testimony that the amount sought was not paid and that no application for dispute resolution was made to dispute the notice. The Landlord also states that he received a cheque for \$4,200.00 for rent arrears that was returned as insufficient funds from the bank. The Landlord has provided copies of the cancelled cheques and the returned item notice from the bank.

The Landlord seeks an order of possession and a monetary order for unpaid rent of \$7,000.00. This consists of unpaid rent of \$1,400 for June, \$2,800.00 for July and \$2,800.00 for August as the Tenant is still occupying the rental. The Tenant has confirmed in his direct testimony that no rent has been paid for July and August and that he is still occupying the rental unit as of the date of this hearing.

The Landlord also seeks \$350.00 for an estimated electricity and gas and \$250.00 for damage to a door. The Tenant disputes this stating that no receipts for utilities or the door have been presented to him by the Landlord. The Landlord confirms that these are estimate amounts based upon his opinion. The Landlord confirmed in his direct testimony that no actual costs have yet been incurred and that no invoices for the utilities have yet been received.

Analysis

I accept the evidence of both parties that the Tenant was properly served with the 10 day notice to end tenancy issued for unpaid rent in person on June 29, 2013 which is supported by the proof of service document submitted by the Landlord. I find that the Tenant did not pay the amount owed on the notice and did not file an application for dispute resolution to dispute the notice within the allowed timeframe. The Tenant is conclusively presumed to have accepted that the tenancy was at an end. The Tenant has failed to provide sufficient evidence to satisfy me that June rent was paid as he disputes that it was for the pet damage deposit which was waived by the Landlord. The Tenant has confirmed in his direct testimony that no rent has been paid for July and August and is still occupying the rental unit. The Landlord has established a claim for an order of possession. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As for the monetary claim, I find on a balance of probabilities and the direct testimony of both parties that the Landlord has established a claim for \$7,000.00 in unpaid rent. The remaining estimated \$350.00 for utilities and \$250.00 for damage to a door are premature as the Landlord has not based these claims on any actual costs incurred, but estimates based upon his opinion. These portions of the claim are dismissed with leave to reapply.

The Landlord amended the application to increase it from \$2,800.00 to \$9,100.00. The Landlord's Application is limited to the maximum \$5,000.00 claim allowed as per his initial application as it was amended and the Landlord did not pay the additional portion for the increased claim. The Landlord's total monetary claim established is \$5,000.00. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$1,400.00 security deposit in partial satisfaction of the claim and I grant a monetary order for the balance due of \$3,650.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted an order of possession and a monetary order for \$3,650.00. The Landlord may retain the security deposit.

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 14, 2013

Residential Tenancy Branch

