



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the landlord to obtain an order of possession for unpaid rent or utilities, a monetary order for unpaid rent or utilities, to keep all or part of the tenant’s security deposit, and to recover the cost of 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 their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”) was considered. The agent testified that the tenant was served the Notice of Hearing and evidence on August 17, 2013 by registered mail sent to the rental unit address and in the tenant’s name. The agent provided a registered mail tracking number in evidence and a document from the postal tracking website that supports that the tenant signed for the registered mail package on August 21, 2013. The agent stated that the tenant continues to occupy the rental unit. Based on the undisputed testimony of the agent and the supporting documentary evidence, I find the tenant was served in accordance with the *Act* as of August 21, 2013, the day in which the tenant signed for the registered mail package.

Preliminary and Procedural Matter

The agent stated that since filing their application, the landlord has suffered a loss of September 2013 rent in the amount of \$800.00 as the tenant continues to occupy the rental unit. The agent requested to amend their claim from \$800.00 to \$1,600.00 comprised of the original \$800.00 rent owing for August 2013, plus the loss of rent for September 2013 in the amount of \$800.00. As the tenant continues to occupy the rental

unit, I will allow the landlord to amend their monetary claim to \$1,600.00 as it is reasonable that the tenant would be aware that rent is due in accordance with the tenancy agreement and given that the tenant continues to occupy the rental unit.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. A fixed term tenancy agreement began on July 1, 2013 and was to revert to a month to month tenancy as of December 31, 2013. Monthly rent in the amount of \$800.00 was due on the first day of each month. A security deposit of \$400.00 was paid by the tenant at the start of the tenancy.

The landlord submitted a copy of the 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") in evidence. The agent testified that the 10 Day Notice was posted on the tenant's door on August 2, 2013 and was dated August 2, 2013. The effective vacancy date on the 10 Day Notice is listed as August 12, 2013. The amount listed as owing is \$800.00 due August 1, 2013. The agent testified that the tenant did not pay the amount owing or dispute the 10 Day Notice within 5 days of the deemed service date which would be three days after the 10 Day Notice was posted to the tenant's door, in accordance with section 90 of the *Act*.

The agent testified that the tenant now owes \$1,600.00 comprised of \$800.00 in unpaid rent for August 2013 plus \$800.00 for loss of rent for September 2013 as the tenant continues to occupy the rental unit and is overholding in the rental unit.

Analysis

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

Order of Possession - I find that the tenant failed to pay the rent or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice, and that the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the

tenancy ended on the corrected effective vacancy date on the 10 Day Notice, which in the matter before me would be August 15, 2013, as the 10 Day Notice was deemed served on August 5, 2013. Accordingly, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

Claim for unpaid rent – The agent testified that the tenant owes \$800.00 for unpaid August 2013 rent, plus \$800.00 for loss of September 2013 rent as the tenant continues to occupy the rental unit. 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 tenant has 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 tenant continues to occupy the unit. The landlord will not regain possession of the unit until after service of the order of possession and has therefore suffered a loss.

I find the landlord has met the burden of proof and has established a monetary claim of **\$1,600.00** comprised of \$800.00 in unpaid rent for August 2013 plus \$800.00 for loss of rent for September 2013.

As the landlord has succeeded with their application, **I grant** the landlord the recovery of the **\$50.00** filing fee. The tenant's security deposit of \$400.00 has accrued \$0.00 in interest since the start of the tenancy.

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 which has accrued no interest as follows:

Unpaid August 2013 rent	\$800.00
Loss of September 2013 rent	\$800.00
Filing fee	\$50.00
Subtotal	\$1,650.00
<i>(Less Tenant's Security Deposit of \$400.00 with \$0.00 in interest)</i>	<i>-\$400.00)</i>
TOTAL OWING BY THE TENANT TO LANDLORD	\$1,250.00

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 tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

I find that the landlord has established a total monetary claim of \$1,650.00 as described above. I authorize the landlord to retain the tenant's full security deposit of \$400.00 in partial satisfaction of the claim, and I grant the landlord a monetary order under section 67 for the balance due of **\$1,250.00**. 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: September 26, 2013

Residential Tenancy Branch

