



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPB, MNR, MNSD, MNDC, FF

Introduction:

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, a monetary Order for unpaid rent, a monetary Order for money owed; to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Landlord's evidence was provided through the interpreters.

The Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were personally served to the Tenant on September 10, 2013. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided:

Is the Landlord entitled to an Order of Possession; to a monetary Order for unpaid rent/lost revenue; and to keep all or part of the security deposit?

Background and Evidence:

The Landlord stated that this tenancy began on February 15, 2012 and that the Tenant is required to pay monthly rent of \$480.00 by the fifteenth day of each month.

The Landlord stated that he and the Tenant signed a Mutual Agreement to End a Tenancy, a copy of which was submitted in evidence. This agreement indicates that the parties have mutually agreed to end the tenancy on August 31, 2013. The Landlord stated that the Tenant is still living in the rental unit.

The Landlord has made a claim of \$2,240.00 of unpaid rent/lost revenue, which includes rent for October of 2013.

The Landlord submitted rent receipts, in which the Landlord has recorded various amounts of money owing, specifically:

- February 23, 2012 – Note indicates \$240.00 in rent due and \$240.00 “deposit” due and that \$300.00 was paid, leaving a balance due of \$180.00
- March of 2012 – Previous debt of \$180.00 from February no rent paid for March, leaving a total debt of \$660.00.
- April 13, 2012 – Previous debt of \$180.00 from February and \$480.00 from March, leaving a total debt of \$660.00. Two payments of \$370.00 leaving a remaining debt of \$290.00.
- May 04, 2012 – Previous debt of \$290.00 plus rent for May of \$480.00 leaving a total debt of \$770.00; less a payment on May 04, 2012 of \$400.00, leaving a total debt of \$370.00; less a payment on May 18, 2012 of \$370.00, leaving nothing owing. There is a note on the receipt that the Tenant owes \$78.00 for a movie.
- June 02, 2012 – \$480.00 paid. There is a note on the receipt that the Tenant owes \$78.00 for a movie.
- July 10, 2012 – There is a note on the receipt that the Tenant owes \$70.00 for movie(s) and that no rent was paid for July, indicating a total debt of \$555.00. (I calculate this total to be \$550.00, not \$555.00, although I note that the amount owing for movies has decreased from June of 2012)
- August 10, 2012 – There is a note on the receipt that the Tenant owes \$78.00 for movie(s). \$480.00 for rent from July, and \$480.00 for rent from August, leaving a total of \$1,038.00; less a payment of \$500.00 on August 10, 2012 and \$480.00 on August 18, 2012, leaving a total of \$58.00. I note that the amount owing for movies has reverted back to the amount owing in June of 2012.
- September 07, 2012 - \$480.00 owing from April and \$58.00 owing from August plus rent for September leaving a total debt of \$1,018.00, less payment of \$470.00, leaving a total debt of \$548.00. This is inconsistent with the receipt from April of 2012, which indicates only \$370.00 owing.
- October of 2012 – Rent paid in full with no indication of amount of rent outstanding
- November 01, 2012 – One payment on November 01, 2012 of \$280.00 and one on November 15, 2012 of \$680.00. It appears the payment was applied to rent for December
- December 01, 2012 – A note that appears to indicate rent for December was paid in November.

- January 14, 2013 - \$20.00 owing for a loan made by the Landlord's wife.
- February 2013 – No rent paid, leaving a debt of \$500.00 (including the loan)
- March 28, 2013 - \$200.00 rent paid for March rent (leaving arrears of \$280.00), \$480.00 owing for February, \$20.00 owing for the loan, and \$480.00 owing for April of 2012. The receipt indicates that the total currently owed is \$1,260.00. As the rent for April is not yet due the current owing is \$780.00, including the \$20.00 loan.
- April 26, 2013 – “Before owing \$780.00” plus this month \$480.00, leaving “total leakage” of \$1,260.00, less the payment on April 26, 2013 of \$170.00, leaving a debt of \$1,090.00.
- May 03, 2013 – Previous debt of \$1,090.00 plus \$480.00 rent for September, less two payments totaling \$850.00, leaving a total debt of \$720.00.
- June 16, 2013 - Previous debt of \$720.00 plus \$480.00 rent for June, less a payment of \$400.00, leaving a total debt of \$800.00.
- July 26, 2013 - Previous debt of \$800.00 plus \$480.00 rent for July, less a payment of \$480.00, leaving a total debt of \$800.00.
- August 04, 2013 - Previous debt of \$800.00 plus \$480.00 rent for August, less a payment of \$400.00, leaving a total debt of \$880.00.
- September of 2013 – Previous debt of \$1,280 plus unpaid rent for September. leaving a total debt of \$1,760.00. This is not consistent with the receipt from August 04, 2013 which declares the previous debt was \$880.00, which would leave total debt of September to be \$1,360.00.

As the Landlord had difficulty explaining the information on the receipts submitted in evidence, the Landlord was directed to explain how much rent is still due for each month of the tenancy. The Landlord declared the following rent still due:

- March of 2012 - \$480
- July of 2012 - \$480.00
- February of 2012 - \$180
- May of 2012 - \$80
- June of 2012 - \$480.00
- July of 2012 - \$480.00
- August of 2012 – No rent due and rent was overpaid by \$500.00
- September of 2012 - \$10.00
- October of 2012 - \$380.00
- November of 2012 - \$200.00
- September of 2012 - \$480.00
- February of 2013 - \$480.00
- March of 2013 - \$280.00
- April of 2013 - \$310.00
- May of 2013 – No rent due and rent was overpaid by \$350.00
- June 2013 - \$80.00
- August of 2013 - \$80.00

- September of 2013 - \$480.00
- October of 2012 - \$480.00

The Tenant has signed a note on the Mutual Agreement to End Tenancy that was signed on July 23, 2013 that indicates the Tenant agrees he currently owes \$880.00 in rent.

The Landlord stated that since the Mutual Agreement to End Tenancy was signed the Tenant has only paid \$400.00 in rent for August.

Analysis

On the basis of the undisputed evidence, I find that the Tenant did not comply with the mutual agreement to end the tenancy on August 31, 2013. I therefore find that the Landlord is entitled to an Order of Possession, pursuant to section 55(2)(d) of the *Residential Tenancy Act (Act)*.

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement that required the Tenant to pay monthly rent of \$480.00 by the first day of each month and that the Tenant paid a security deposit of \$240.00.

I find that the receipts submitted in evidence are unreliable. While these receipts may make sense to the Landlord, they appeared inconsistent and illogical to me. On the basis of the receipts alone, I am not confident that the Tenant owed \$1,760.00 in rent by the end of September of 2013, as is indicated by the receipt dated September of 2013.

I find that the testimony provided at the hearings regarding rent due is also somewhat unreliable, as there are inconsistencies between that testimony and the receipts submitted in evidence.

On the basis of the Mutual Agreement to End Tenancy that was signed on July 23, 2013, I find that the Tenant agreed that he owed \$880.00 in rent on July 23, 2013.

On the basis of the testimony of the Landlord and the receipt for August that was submitted in evidence, I find that the Tenant still owes rent of \$80.00 for August of 2013. I find that the Landlord's testimony regarding rent owing for this month and the receipt submitted in evidence are consistent and I am comfortable relying on this evidence.

On the basis of the testimony of the Landlord and the receipt for September that was submitted in evidence, I find that the Tenant still owes rent of \$480.00 for September of 2013. I find that the Landlord's testimony regarding rent owing for this month and the receipt submitted in evidence are consistent and I am comfortable relying on this evidence.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that no rent was paid for October of 2013.

I specifically note that I did not feel that the Landlord was intentionally misleading me, I am simply not confident that the Landlord clearly understands the receipts he created and/or that he has simply made some miscalculations.

I find that the Tenant currently owes the Landlord \$1,920.00 for unpaid rent for the period ending October 31, 2013. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,920.00 in outstanding rent to the Landlord.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective on October 31, 2013. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$1,970.00, which is comprised of \$1,920.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain the security deposit of \$240.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,730.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: October 23, 2013

Residential Tenancy Branch

