



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:46 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord gave sworn testimony that he handed the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on August 26, 2013. I find that the landlord has served the 10 Day Notice to the tenant in accordance with the *Act*.

The landlord testified that he served the tenant with his application for dispute resolution hearing package by sending it by registered mail on September 3, 2013. He did not have the Canada Post Tracking Number or Customer Receipt available to confirm this registered mailing. However, based on the tenant's provision of written evidence with respect to the landlord's application, received by the Residential Tenancy Branch on October 2, 2013, I find that the tenant has confirmed her receipt of the landlord's dispute resolution hearing package. Pursuant to sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the landlord's dispute resolution hearing package on September 8, 2013, the fifth day after its registered mailing.

During the course of this hearing and after I had conducted my preliminary review of the landlord's application and advised him that I had questions regarding various portions of the landlord's application, difficulties arose with respect to the landlord's connection to this teleconference hearing. Although I could hear the landlord speaking with someone

on what appeared to be another telephone line, I remained connected with the landlord. After trying unsuccessfully to communicate further with the landlord for several minutes, I discontinued the hearing, as I had obtained sufficient information from him to reach a decision.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent and/or unpaid utilities?
Is the landlord entitled to a monetary award for unpaid rent and/or utilities? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that this tenancy began approximately one year ago. Monthly rent for this periodic tenancy is set at \$1,000.00, payable in advance by the first of each month, plus utilities. The landlord said that the tenant now appears to be the only one of three tenants who were previously living in the main floor of this rental unit, above the landlord's own accommodations. He said that he continues to hold the \$561.00 security deposit paid for this tenancy.

The tenant entered into written evidence a number of copies of handwritten notices to end tenancy or in one case a blank 10 Day Notice. None of these notices have any legal effect under the Act.

The landlord's 10 Day Notice of August 26, 2013, the only one validly before me for the purposes of this hearing identified \$2,000.00 in unpaid rent as owing for this tenancy as of July 1, 2013, and \$600.00 in unpaid utilities owing as of March 1, 2013.

The landlord confirmed that he did receive and accept \$450.00 in rent from Tenant EA towards this tenancy on July 3, 2013. In the landlord's receipt entered into written evidence by the tenant, this amount was shown as having been paid for July 2013 rent. The landlord also confirmed that the tenant made a payment of \$550.00 on June 26, 2013 for her July 2013 rent. Despite the landlord's acceptance of payments totalling \$1,000.00 applied to the \$1,000.00 in rent owed for July 2013, the landlord's 10 Day Notice of August 26, 2013 identified \$2,000.00 as owing to the landlord by the tenant as of July 1, 2013. The landlord explained that the amounts shown as owing in the 10 Day Notice were for unpaid rent of \$1,000.00 for August and a further \$1,000.00 in "back rent" owing from a few months earlier. The landlord did not enter into written evidence any rent ledger for the rental unit, nor anything else other than a copy of his 10 Day Notice and his application for dispute resolution.

The landlord testified that he has received nothing further towards this tenancy since August 26, 2013. His application for a monetary award of \$4,000.00 was for unpaid rent of \$1,000.00 for each of July, August, September and October 2013, and six months of unpaid utilities.

Analysis – Landlord's Application for an Order of Possession Based on the 10 Day Notice

The tenant failed to pay the amounts identified as owing in full on the 10 Day Notice within five days of receiving that Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by September 9, 2013. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Analysis – Monetary Award

The landlord supplied no utility bills. I advised the landlord at the hearing that I could not allow his claim for unpaid utility bills without any specific evidence of unpaid bills. I dismiss the landlord's application for a monetary award for unpaid utilities owing as of August 26, 2013, without leave to reapply.

Other than his sworn oral testimony, the landlord supplied little evidence with respect to his application for a monetary award. His application indicated that as of August 26, 2013, \$2,000.00 in rent had been owing since July 1, 2013. However, there is undisputed evidence that \$1,000.00 in rent was paid towards this tenancy by the tenant and Tenant EA by July 3, 2013. Furthermore, the landlord's own receipts confirmed that these payments were applied to the tenant's \$1,000.00 rent for July 2013.

Under these circumstances, I find that the landlord has not provided adequate evidence to substantiate his claim that \$1,000.00 of the \$2,000.00 cited in his 10 Day Notice applied to unpaid rent owing from some unspecified period pre-dating July 2013. His evidence in this regard was vague and did not identify actual payments owing and payments received for any of the periods prior to July 1, 2013. In fact, the only specific evidence provided with respect to the period prior to the issuance of the 10 Day Notice was the rent receipt evidence supplied by the tenant. For these reasons, I dismiss the landlord's application for a monetary award for the period prior to August 1, 2013, without leave to reapply. I do so as there is evidence that rent for the month of July

2013 was paid, and the landlord failed to provide sufficient evidence to entitle him to a monetary award for unpaid rent he claimed was owing prior to July 1, 2013.

I find undisputed evidence that the landlord is entitled to a monetary award of \$1,000.00 for unpaid rent for each of August, September and October 2013.

I allow the landlord to retain the \$561.00 security deposit held for this tenancy plus applicable interest. No interest is payable over this period. I allow the landlord to recover his \$50.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent owing and the filing fee for this application and to retain the security deposit for this tenancy:

Item	Amount
Unpaid August 2013 Rent	\$1,000.00
Unpaid September 2013 Rent	1,000.00
Unpaid October 2013 Rent	1,000.00
Less Security Deposit	-561.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$2,489.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 09, 2013

Residential Tenancy Branch

