



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rockwell Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the landlord for an order of possession for unpaid rent, for a monetary order for unpaid rent, and to recover the cost of the filing fee.

Two agents for the landlord, RM and LN, (the “agents”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agents were 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 agents testified under oath that the tenant was served the Notice of Hearing and evidence package by personal service at the rental unit on September 17, 2013 at 9:45 a.m. by agent RM. Based on the undisputed testimony of agent RM, I accept that the tenant was sufficiently served in accordance with the *Act* on September 17, 2013.

Preliminary and Procedural Matter

Originally, the landlord's monetary claim was for \$1,482.00 for unpaid rent and non-sufficient funds (“NSF”) fees two NSF cheques written by the tenant and returned for the months of August 2013 and September 2013 when the landlord filed their application for dispute resolution on September 16, 2013. Agent RM stated that since filing their application, the tenant remained in the rental unit, and owed the landlord \$725.00 for “use and occupancy” for the month of October 2013, which increased the total amount owing to \$2,175.00, which is comprised of \$725.00 for three months. On October 11, 2013, the agents stated that the tenant paid the landlord \$1,674.00 toward the \$2,175.00 owing, which fully covered the \$725.00 owing for “use and occupancy” for October 2013, and left a balance owing of \$501.00 for the unpaid portions of August

2013 and September 2013 rent. Agent RM stated that the tenant was issued a receipt for “use and occupancy” for the month of October 2013, and that the landlord did not reinstate the tenancy and is no longer requesting the NSF fees as they failed to submit evidence to support those fees. Based on the above, the agents requested to reduce the landlord’s monetary claim from \$1,482.00 to \$501.00. I find that a reduction in the landlord’s monetary claim against the tenant does not prejudice the tenant. Therefore, I permit the agents to reduce the landlord’s monetary claim to \$501.00 as a result.

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?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. Monthly rent in the amount of \$725.00 is due on the 31st day of the month prior. For example, rent for August 2013 was due on July 31, 2013. Agent LN stated that it was also acceptable for tenants to pay rent on the 1st day of the month when rent is due. A security deposit of \$360.00 was paid by tenant at the start of the tenancy which the landlord continues to hold.

The agents confirmed service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, (the “10 Day Notice”), dated September 5, 2013, was served by posting the 10 Day Notice on the tenant’s door on September 5, 2013 at 5:15 p.m., which was witnessed by third party, LW. The 10 Day Notice submitted in evidence indicates that as of September 1, 2013, \$1,482.00 was owed for unpaid rent, which agent RM stated included NSF fees also. The agents stated that the tenant did not dispute the 10 Day Notice or pay any rent within five days of being served the 10 Day Notice. The effective vacancy date on the 10 Day Notice is listed as September 15, 2013. The agents testified that the tenant continues to occupy the rental unit and did not vacate the rental unit in accordance with the 10 Day Notice.

The landlord submitted in evidence the tenancy agreement, 10 Day Notice, and a proof of service document.

Analysis

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

Order of Possession – I find the tenant did not dispute the 10 Day Notice within 5 days of receiving the 10 Day Notice on the deemed service date of September 8, 2013. Therefore, I find 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 of the 10 Day Notice which automatically corrects under the *Act* to September 18, 2013, which is ten days after the tenant was deemed served with the 10 Day Notice on September 8, 2013. Accordingly, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenant.

Claim for unpaid rent and loss of rent – The agents testified that the tenant failed to pay \$725.00 for August 2013 rent, \$725.00 for September 2013 rent, and that they suffered a loss of rent for October 2013 rent in the amount of \$725.00, for a total amount of \$2,175.00, however, the tenant did pay \$1,674.00 towards her arrears on October 11, 2013, which was over one month after being served the 10 Day Notice and was not within the 5 days as permitted under section 46 of the *Act*. I accept the undisputed testimony of the agents that the tenant continues to owe \$501.00 for the unpaid portions of August 2013 and September 2013 rent and that the landlord did not reinstate the tenancy by issuing a receipt for “use and occupancy” for the month of October 2013.

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 rental unit. The landlord will not regain possession of the unit until after service of the order of possession. I find the landlord has met the burden of proof and **I find** the landlord has established a monetary claim of **\$501.00** for unpaid portions of August 2013 rent and September 2013 rent.

As the landlord has succeeded with their application, **I grant** the landlord the recovery of the **\$50.00** filing fee.

Monetary Order - **I find** that the landlord has established a total monetary claim of **\$551.00** comprised of \$501.00 in unpaid rent, plus the \$50.00 filing fee. This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant’s

security deposit which the landlord continue to hold in the amount of \$360.00 which has accrued \$0.00 in interest to date. I **authorize** the landlord to retain the tenant's full security deposit of \$360.00 in partial satisfaction of the landlord's monetary claim, and I grant the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing to the landlord by the tenant in the amount of **\$191.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The landlord has been granted 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.

The landlord has established a total monetary claim of \$551.00 comprised of \$501.00 in unpaid rent plus the \$50.00 filing fee. I authorize the landlord to retain the tenant's full security deposit of \$360.00 in partial satisfaction of the claim.

The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing to the landlord in the amount of \$191.00. This order must be served on the tenant and 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: October 24, 2013

Residential Tenancy Branch

