



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 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, for authorization to keep all or part of the security deposit, and to recover the cost of the filing fee.

Two agents for the landlord, JS and SA, (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 by registered mail on September 16, 2013 and the registered mail tracking number was submitted in evidence. The agents testified that according to the online post office registered mail tracking website, the registered mail package, which included the Notice of Hearing and evidence of the landlord, was successfully delivered to the tenant on October 18, 2013 and was signed for by the tenant. Based on the above, I find the tenant was served in accordance with the *Act* on October 18, 2013.

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

A copy of the tenancy agreement was submitted in evidence. Monthly rent in the amount of \$1,350.00 is due on the first day of each month. A security deposit of \$675.00 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 4, 2013, was served by registered mail on September 5, 2013. A registered mail tracking number was submitted in evidence. The agents testified that according to the online post office registered mail tracking website, the 10 Day Notice was successfully delivered on September 8, 2013 when the tenant signed for the registered mail package.

According to the 10 Day Notice submitted in evidence, the 10 Day Notice indicated that \$1,350.00 was owed for unpaid rent as of September 1, 2013. The agents stated that the tenant did not dispute the 10 Day Notice or pay any rent since being served with the 10 Day Notice. The agents stated that rent for October 2013 has not been paid and the landlord is seeking \$1,350.00 for unpaid September 2013 rent, and \$1,350.00 for unpaid October 2013 rent or loss of rent as the tenant continues to occupy the rental unit and did not vacate the rental unit in accordance with the 10 Day Notice. The effective vacancy date listed on the 10 Day Notice is September 4, 2013.

The landlord submitted in evidence, the tenancy agreement, 10 Day Notice, proof of service documents, registered mail receipts, a tenancy agreement addendum, Form K, photos, and an authorization for an agent to act on their behalf.

Analysis

Based on the documentary evidence and the undisputed testimony of the landlord 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 after receiving the 10 Day Notice on September 8, 2013. Therefore, 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 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 September 2013 rent in the amount of \$1,350.00 and that the landlord suffered a loss of rent of \$1,350.00 for October 2013 as the tenant failed to vacate the rental unit pursuant to the 10 Day Notice, and remains in 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 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 **\$2,700.00** comprised of \$1,350.00 owing for unpaid September 2013 rent, and loss of \$1,350.00 of October 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 **\$2,750.00** comprised of \$2,700.00 in unpaid rent and loss of rent, plus the \$50.00 filing fee. **I authorize** the landlord to retain the tenant's full security deposit of \$675.00 in partial satisfaction of the claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing to the landlord in the amount of **\$2,075.00**. 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 \$2,750.00 comprised of \$2,700.00 in unpaid rent and loss of rent, plus the \$50.00 filing fee. I authorize the landlord to retain the tenant's full security deposit of \$675.00 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 \$2,075.00. 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

