



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPB MNR MNDC 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, and to recover the cost of the filing fee.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide her evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”) was considered. The landlord testified that the tenant was served the Notice of Hearing on September 14, 2013 personally on the tenants at the rental unit at approximately noon, which was witnessed by third party, PV. The landlord submitted a letter from PV supporting that she witnessed the landlord serve the tenants the Notice of Hearing. Based on the above, I find the tenants were served in accordance with the *Act* on September 14, 2013.

Preliminary and Procedural Matter

The landlord stated that since filing her application, the tenants have failed to pay October 2013 rent in the amount of \$1,150.00. The landlord requested to amend her monetary claim from \$3,815.00.00 to \$4,365.00 comprised of \$795.00 owing for May 2013 rent, \$270.00 owing for June 2013 rent, \$650.00 owing for July 2013 rent, \$350.00 owing for August 2013 rent, and \$1,150.00 owing for the months of September and October of 2013. The tenants continue to occupy the rental unit. Therefore, I allow the landlord to amend her monetary claim to \$4,365.00 as it is reasonable that the tenants

would be aware that rent is due in accordance with the tenancy agreement and given that the tenants continue 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?

Background and Evidence

The landlord submitted a copy of the written tenancy agreement in evidence. A two year fixed term tenancy began on January 1, 2013 and was to revert to a month to month tenancy after January 1, 2015. Monthly rent in the amount of \$1,150.00 is due on the first day of each month. The landlord stated that the tenants failed to pay a security deposit or pet damage deposit during the tenancy.

The landlord confirmed service of the 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") dated July 10, 2013 by registered mail to both tenants on August 2, 2013. Two registered mail tracking numbers were submitted in evidence. The landlord submitted the 10 Day Notice in evidence. Pursuant to section 90 of the *Act*, I find the tenants were deemed served 5 days later on August 7, 2013. The effective vacancy date on the 10 Day Notice is listed as July 10, 2013. The amount owing listed on the 10 Day Notice was \$1,715.00 due July 1, 2013, comprised of \$795.00 owing for May 2013 rent, \$270.00 owing for June 2013 rent, and \$650.00 owing for July 2013 rent.

The landlord testified that the tenants failed to pay the amount owing or dispute the notice within 5 days of being served with the 10 Day Notice. The landlord stated that the tenants have since failed to pay \$350.00 for August 2013 and that she did not reinstate the tenancy at any time since serving the 10 Day Notice. Furthermore, the landlord stated that the tenants have failed to pay \$1,150.00 for September 2013 rent and \$1,150.00 for October 2013 and continue to occupy the rental unit. The landlord is seeking a two day order of possession and a monetary order for unpaid rent.

The landlord submitted proof of service documents, the 10 Day Notice, tenancy agreement and notes from the tenants in evidence.

Analysis

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

Order of Possession - I find that the tenants failed to pay the rent or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice, and that the tenants are conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the corrective effective vacancy date on the 10 Day Notice which automatically corrects under the *Act* to August 17, 2013, which is 10 days after the 10 Day Notice was deemed served on the tenants. Accordingly, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

Claim for unpaid rent – The landlord testified that the tenants owe a total of \$4,365.00 in unpaid rent. Pursuant to section 26 of the *Act* tenants must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants have 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 tenants continue to occupy the rental unit. The landlord will not regain possession of the rental 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 **\$4,365.00** comprised of unpaid rent of \$795.00 for unpaid rent for May 2013, \$270.00 for unpaid rent for June 2013, \$650.00 for unpaid rent for July 2013, \$350.00 for loss of rent for August 2013, \$1,150.00 for loss of rent for September 2013, and \$1,150.00 for loss of rent for October 2013.

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

Given the above, **I find** that the landlord has established a total monetary claim of **\$4,415.00** consisting of \$4,365.00 in unpaid rent and loss of rent, plus the \$50.00 filing fee. **I grant** the landlord a monetary order pursuant to section 67 of the *Act* in the amount of **\$4,415.00**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The landlord is granted an order of possession effective **two (2) days** after service upon the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The landlord is granted a monetary order under section 67 in the amount of **\$4,415.00**. 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: October 22, 2013

Residential Tenancy Branch

