



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to keep all or part of the tenant's security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover 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 their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant 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 Notice of Hearing and evidence was served on the tenant personally at the rental unit on October 10, 2013 at 12:30 p.m. and that the tenant accepted the package from the landlord. Based on the undisputed testimony of the landlord, I accept that the tenant was sufficiently served in accordance with the *Act* on October 10, 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

The landlord submitted a copy of the written tenancy agreement in evidence. A fixed term tenancy agreement began on March 1, 2011 and reverted to a month to month tenancy after March 1, 2012. Monthly rent in the amount \$1,050.00 was due on the first day of each month. Monthly rent did not include utilities such as water or electricity. The tenant paid a security deposit of \$525.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that the tenant owes \$720.00 for unpaid rent prior to October 2013, owes \$1,050.00 for unpaid October 2013 rent, owes \$1,050.00 for unpaid November 2013 rent, and owes \$307.49 for the unpaid water bill.

The landlord testified that he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated October 2, 2013 indicating that \$1,050.00 was owing for rent as of October 1, 2013 plus \$720.00 for rent "arrears" and wrote an effective vacancy date of October 12, 2013 on the 10 Day Notice. The landlord testified that the tenant did not dispute the 10 Day Notice or pay the amounts owing for October 2013 rent and rent arrears, and that since filing his application on October 8, 2013, the tenant subsequently owes \$1,050.00 for November 2013 as the tenant did not return the rental unit keys and continues to occupy the rental unit.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Analysis

Based on documentary evidence, the undisputed testimony of the landlord, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenant failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The effective vacancy date of the Notice was October 12, 2013. I find the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, October 12, 2013. The tenant continues to occupy the rental unit. I find that the landlord also suffered a loss of rent for November 2013, as the tenant continues to occupy the rental unit without paying rent. Therefore, **I grant** the landlord an order of possession **effective two (2)**

days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

Monetary claim of landlord – The landlord testified that the tenant owes \$720.00 in unpaid rent prior to October 2013, owes \$1,050.00 in unpaid rent for October 2013, and owes \$1,050.00 for loss of November 2013 rent, plus \$307.49 for an unpaid water bill. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Therefore, I find the tenant breached section 26 of the *Act* by failing to pay rent as claimed by the landlord. I accept the undisputed testimony of the landlord that the tenant continues to occupy the rental unit. The landlord also submitted in evidence a copy of the water bill in the amount of \$307.49 which the landlord stated remains unpaid by the tenant and that the tenancy agreement did not include any utilities in the monthly rent. Based on the above, I find the landlord has met the burden of proof and have substantiated their monetary claim of **\$3,127.49** for unpaid rent and loss of rent, plus the unpaid water bill as claimed by the landlord.

As the landlord's application had merit, I grant the landlord the recovery of the **\$50.00** filing fee.

Monetary Order – I find that the landlords have established a total monetary claim of **\$3,177.49** comprised of \$3,127.49 in unpaid rent and loss of rent, plus an unpaid water bill and 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 \$525.00 which has accrued \$0.00 in interest to date. **I authorize** the landlord to retain the tenant's full security deposit of \$525.00 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 **\$2,652.49**. 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 on 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 \$3,177.49 as described above. I authorize the landlord to retain the tenant's full security deposit of \$525.00 in partial satisfaction of the landlord's monetary claim.

The landlord has been granted a monetary order pursuant to section 67 of the *Act* for the balance owing to the landlord by the tenant in the amount of \$2,652.49. 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.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

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: November 19, 2013

Residential Tenancy Branch

