



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 dealt with an Application for Dispute Resolution filed on January 9, 2014, by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep all or part of the security and or pet deposit; and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The Landlord submitted documentary evidence which indicates the Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on January 10, 2014, by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find the Tenant is deemed served notice of this proceeding, in accordance with section 90 of the Act and I proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord provided evidence that the parties entered into a written tenancy agreement that began on July 1, 2011. Rent is payable on the first of each month in the amount of \$762.00 plus \$153.00 utilities. On July 1, 2011 the Tenant paid \$458.00 as the security deposit.

The Landlord testified that the Tenant fell behind on his rent when he was laid off from his work and his son moved out so on December 26, 2013 the Landlord personally served the Tenant with a 10 Day Notice for the accumulated unpaid rent and unpaid utilities totalling \$3,169.82. The Tenant has failed to make any payments to the past

due amounts and did not pay anything towards January or February 2014 rent or utilities.

The Landlord stated that he spoke to the Tenant a few days ago and confirmed the Tenant is still occupying the unit. The Landlord seeks to regain possession of the unit as soon as possible and to recover the unpaid rent and utilities.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent and utilities they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant received the 10 Day Notice on December 26, 2013, and the effective date of the Notice is **January 05, 2014**, in accordance with section 46 of the Act. The Tenant did not pay the rent or the utilities and did not dispute the Notice, therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent and utilities of \$4,084.82 which was due January 1, 2014 (\$3,169.82 + \$762.00 + \$153.00). The Tenant failed to pay rent in accordance with the tenancy agreement which is a breach of section 26 of the Act. Accordingly, I award the Landlord a Monetary Award for unpaid rent and utilities up to and including January 2014 of **\$4,084.82**.

As noted above this tenancy ended **January 5, 2014**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for February 2014, not rent plus utilities. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and they will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of February 2014 of \$762.00 plus utilities of \$153.00, in the amount of **\$915.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid Rent and Utilities to January 2014	\$4,084.82
Use & Occupancy, loss of rent, and utilities Feb. 2014	915.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$5,049.82
LESS: Security Deposit \$458.00 + Interest 0.00	<u>-458.00</u>
Offset amount due to the Landlord	<u>\$4,591.82</u>

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$4,591.82**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order 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: February 25, 2014

Residential Tenancy Branch

