



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 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, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for authorization to keep all or part of the tenant’s security deposit, and to recover the cost of the filing fee.

The landlord and an interpreter for the landlord appeared at the teleconference hearing and gave affirmed testimony. The hearing process was explained to the landlord and the landlord was given the opportunity to provide her evidence orally. A summary of the evidence 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 landlord testified that the tenant was served the Notice of Hearing and evidence on February 14, 2014 via registered mail to the rental unit address, and that the tenant continues to reside in the rental unit. A registered mail tracking number was provided. According to the registered mail tracking website, the tenant signed for the registered mail package on February 17, 2014. Based on the above, I accept that the tenant was served on February 17, 2014, in accordance with the Act.

Preliminary and Procedural Matters

At the outset of the hearing, the landlord was advised that her claim for unpaid rent for April 2014 was premature as the hearing was held on March 28, 2014 and rent for April 2014 was not yet due. As a result, I have not considered the landlord’s claim for April 2014 unpaid rent as that portion of her claim is premature.

During the hearing, the landlord appeared to have difficulty understanding the English language. As a result, the landlord had the hearing process and several of the questions asked by the undersigned repeated on multiple occasions to ensure the landlord understood both the hearing process and the questions being asked of her. During the hearing, the landlord was able to find an interpreter who was affirmed and assisted for the remainder of the hearing to translate into English any words that the landlord had difficulty understanding.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent under the *Act*?
- Is the landlord entitled to a monetary order for unpaid rent 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 testified that she assumed a verbal month to month tenancy after purchasing the home on or about August 1, 1996. The landlord stated that current monthly rent of \$1,150.00 is due on the first day of each month. The landlord stated that the tenant paid a security deposit of \$400.00 at the start of the tenancy which the landlord continues to hold. The landlord was unsure how long the tenant was living in the home before she purchased it.

The landlord testified that the tenant was served with a 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") dated January 31, 2014 by personal service to the tenant at the rental unit on February 1, 2014. A copy of the 10 Day Notice was submitted in evidence. The effective vacancy date on the 10 Day Notice was listed as February 9, 2014. The amount listed as the amount owing for unpaid rent was \$5,400.00 due as of January 31, 2014. The landlord testified that the tenant has failed to pay \$6,550.00 in rent as follows:

1. Unpaid portion of October 2013 rent	\$800.00
2. Unpaid rent for November 2013	\$1,150.00
3. Unpaid rent for December 2013	\$1,150.00
4. Unpaid rent for January 2014	\$1,150.00
5. Unpaid rent for February 2014	\$1,150.00
6. Unpaid rent for March 2014	\$1,150.00
TOTAL	\$6,550.00

The landlord stated that the tenant did not dispute the 10 Day Notice dated January 31, 2014 and advised the landlord that she “does not have any money”. The tenant continues to occupy the rental unit and the landlord is seeking an order of possession and a monetary order for unpaid rent as a result.

In the landlord’s application details of dispute, the landlord makes reference to an “NSF check”; however failed to present any documentary evidence or testimony to support that portion of her monetary claim.

Analysis

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

Order of Possession – I accept the landlord’s undisputed testimony that the tenant was served personally with the 10 Day Notice on February 1, 2014. I find that the tenant failed to pay the monthly rent or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice, and that 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 listed on the 10 Day Notice, which in the matter before me automatically corrects to February 11, 2014 as the 10 Day Notice was served February 1, 2014. Accordingly, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenant as the corrected effective vacancy date of the 10 Day Notice, February 11, 2014, has passed. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

Claim for NSF fee – I find the landlord provided insufficient evidence to prove that the landlord suffered the loss of an “NSF fee”. The landlord did not provide testimony or documentary evidence to support that the landlord paid an NSF fee or the amount of an alleged NSF fee. Therefore, **I dismiss** the landlord’s claim for an NSF fee due to insufficient evidence, **without leave to reapply**.

Claim for unpaid rent – The agent testified that the tenant has failed to pay a total of \$6,550.00 in rent between October 2013 and March 2014. 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 breached section 26 of the *Act* by failing to pay rent when it is due, which is the first day of each month. I accept that the tenant continues to occupy the rental unit.

Based on the above, **I find** that the landlord has met the burden of proof and has established a monetary claim of \$6,550.00 comprised of unpaid rent as claimed and described above.

As the landlord's application has merit, **I grant** the landlord the recovery of the **\$100.00** filing fee. The tenant's security deposit of \$400.00 has accrued \$58.47 in interest since the start of the tenancy, which was on or about August 1, 1996, according to the landlord's undisputed testimony. As a result, the total security deposit held by the landlord is \$458.47.

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, including interest, as follows:

1. Unpaid portion of October 2013 rent	\$800.00
2. Unpaid rent for November 2013	\$1,150.00
3. Unpaid rent for December 2013	\$1,150.00
4. Unpaid rent for January 2014	\$1,150.00
5. Unpaid rent for February 2014	\$1,150.00
6. Unpaid rent for March 2014	\$1,150.00
7. Filing fee	\$100.00
Subtotal of monetary claim	\$6,650.00
<i>(Less Tenant's Security Deposit of \$400.00 + \$58.47 in interest)</i>	<i>-(\$458.47)</i>
TOTAL OWING BY THE TENANT TO LANDLORD	\$6,191.53

I ORDER the landlord to retain the tenant's full security deposit including interest of \$458.47 in partial satisfaction of the landlord's \$6,650.00 monetary claim, and **I grant** the landlord a monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of **\$6,191.53**. 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 \$6,650.00 as described above. The landlord has been ordered to retain the tenant's full security deposit including interest of \$458.47 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of \$6,191.53. 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 in both the English and Traditional Chinese languages.

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: March 28, 2014

Residential Tenancy Branch

