



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord confirmed their intent on seeking money owed or compensation for damage or loss under the act regulation or tenancy agreement, by writing "*Rent for June and July rent \$986.00 + June rent estimated and 350 and utilities for June and July \$310*"; on their application for Dispute Resolution.

Based on the aforementioned, I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to recover the payment for loss of rent or use and occupancy plus utilities for June and July 2014. Accordingly, I amended their application, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on May 28, 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; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord submitted documentary evidence which indicated that the Tenant was served with copies of the Landlord's application for dispute resolution and Notice of dispute resolution hearing, on May 30, 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 was deemed served notice of this proceeding on June 4, 2014, 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 submitted evidence that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on December 10, 2013 and was set to expire on May 31, 2014. The Tenant was required to pay rent of \$1,175.00 plus 50% of the utilities at a flat rate of \$125.00 on the first of each month. On December 10, 2013 the Tenant paid \$575.00 as the security deposit.

The Landlord testified that as of May 6, 2014 the Tenant had accumulated a balance owing of rent and utilities of \$1,950.00 so he served her with a 10 Day Notice via registered mail on December 10, 2013. Canada Post tracking information was provided in his documentary evidence.

The Landlord stated that the Tenant continues to reside in the rental unit and he has entered into a verbal agreement with her for use and occupancy until July 31, 2014. The Tenant made payments of \$485.00 on May 12, 2014; \$500.00 on May 23, 2014; and \$1,000.00 on June 6, 2014 which leaves a balance owing for June use and occupancy plus utilities of \$1,265.00. He provided copies of the receipts of the e-mail transfers which state the payments were accepted for use and occupancy only and that the tenancy was not reinstated.

The Landlord wished to proceed with his request for an Order of Possession effective July 31, 2014 and a monetary order for June use and occupancy plus utilities.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent 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 is deemed to have received the 10 Day Notice on May 11, 2014, five days after it was mailed, and the effective date of the Notice is **May 21, 2014**, in accordance with section 90 of the Act.

The Tenant did not pay the rent in full within the required five day period and she did not dispute the Notice, therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended 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, effective **July 31, 2014**.

The evidence supports that the Tenant has since paid the outstanding rent and utilities that were due May 1, 2014. Accordingly, I dismiss the claim for unpaid rent and utilities for May 2014.

As noted above this tenancy ended **May 21, 2014**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy plus utilities for June 2014, and not rent. The evidence supports the parties entered into a verbal agreement for the Tenant to continue to occupy the rental unit and pay for use and occupancy. Accordingly, I award the Landlord a Monetary Order for use and occupancy plus utilities for June 2014 in the amount of **\$1,265.00**.

As noted above, the parties have entered into an agreement for use and occupancy plus utilities up to July 31, 2014. At the time of this hearing on Jun 11, 2014, payment for July occupancy was not due. Therefore, I grant the Landlord leave to make a future application, in the event the Tenant fails to pay for July 2014 occupation plus utilities and the Landlord suffers a loss.

As occupation of the rental unit will not end until the end of July 2014, and I have granted a monetary order for the full month of June 2014, I decline to issue an order to disburse the security deposit at this time. Rather, I order that the deposit currently held in trust by the Landlord be administered in accordance with Section 38 of the *Residential Tenancy Act*.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **July 31, 2014, after service 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 Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order in the amount of **\$1,315.00** (\$1,265.00 + \$50.00). 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: June 11, 2014

Residential Tenancy Branch

