



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 clarified their intent on seeking money owed or compensation for damage or loss under the act regulation or tenancy agreement, by writing "\$360.00 + June rent (810)".

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 he clearing indicated his intention of seeking to recover the payment for June. Therefore, I amend their application to include the request *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on May 14, 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 parties appeared at the teleconference hearing, acknowledged receipt of the Landlord's application for Dispute Resolution and the Notice of hearing documents submitted by the Landlord, and gave affirmed testimony. . Each party was provided an opportunity to ask questions about the process, as explained in the recorded message at the outset of this proceeding; however, each declined and acknowledged that they understood how the conference would proceed.

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 documentary evidence which included a copy of the 10 Day Notice to end tenancy for unpaid rent.

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced on May 1, 2013. The Tenant was required to pay rent of \$780.00 on the first of each month and on or before May 1, 2013, the Tenant paid \$390.00 as the security deposit.

The Landlord testified that when the Tenant failed to pay the May 2014 rent in full he posted a 10 Day Notice to end tenancy on May 5, 2014 on her door, for \$360.00. On June 25, 2014 the Tenant paid \$900.00 for part of the outstanding amount due for May and part of June rent. No money has been received for July rent. The Landlord is seeking an Order of Possession and a Monetary Order.

The Tenant testified and confirmed receipt of the 10 Day Notice on May 5, 2014. She stated that she did not make an application to dispute the Notice and did not submit evidence because she does not understand the process, does not have a phone, is homeward bound because she has three children, and does not have internet.

The Tenant argued that the amount listed on the 10 Day Notice as outstanding rent is not all rent. Rather, it is comprised of an amount being charged to her for an emergency plumbing bill and \$40.00 of rent. She stated that she paid the Landlord the remaining \$40.00 owed for the May rent on June 25, 2014 when she paid her June rent.

The Landlord submitted that the Tenant's rent was increased to \$810.00 per month after he served her with a Notice of Rent Increase three months prior. Therefore he was seeking \$1,170.00 for June and July (\$360.00 May + \$810.00 June + \$810.00 for July less \$900.00 payment).

The Tenant denied receiving a Notice of Rent Increase and argued that she had entered into a verbal agreement with the Landlord that allowed her to pay her rent later in June 2014.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The 10 Day Notice provides information to tenants about how to contact the *Residential Tenancy Branch* and what will happen now that they have been served the 10 Day Notice. Specifically, the Notice states as follows:

***Tenant: You may be EVICTED if You Do Not Respond to this Notice.
You have five (5) days to pay the rent or utilities to the landlord or file an
Application for Dispute Resolution with the Residential Tenancy Branch.***

Based on the above, I do not accept the Tenant's argument that she did not know that she was required to file an application to dispute the Notice or that she could not obtain additional information about the 10 Day Notice and this process.

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 received the 10 Day Notice on May 5, 2014, three days after it was posted to her door, and the effective date of the Notice is **May 15, 2014**, in accordance with section 90 of the Act.

In the case of verbal testimony when one party submits their version of events, in support of their position, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party arguing their position would fail to meet this burden.

The Tenant argued that she had entered into a verbal agreement with the Landlord that allowed her to pay her rent late. The Landlord stated that the Tenant owed the rent money and still had an outstanding balance owing after she made a \$900.00 payment on June 25, 2014.

The evidence proves the Tenant did not pay the rent in full 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 of \$360.00 for May 2014. Notwithstanding the Tenant's argument that only \$40.00 of the amount claimed was rent, in the absence of proof to the contrary, I find the Tenant failed to pay rent in accordance with the tenancy agreement, which is a breach of section 26 of the Act. The Tenant did however make a

payment on June 25, 2014 of \$900.00 which paid the outstanding May 2014 balance in full. Accordingly, I dismiss the Landlord's claim for unpaid May 2014 rent.

The Landlord testified that rent was increased to \$810.00 effective June 1, 2014; however, no documentary evidence was provided to support that the Tenant was served a proper Notice of Rent Increase. In the presence of the Tenant's disputed testimony, I find there to be insufficient evidence to prove rent was increased effective June 1, 2014.

As noted above this tenancy ended **May 15, 2014**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for June 2014 and July 2014, not rent. The Tenant is still occupying the unit and did not make a payment for July 2014 occupation. The Landlord will not regain possession of the unit until after service of the Order of Possession and will have to work to find replacement tenants for as soon as possible.

Based on the above, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of June 2014 and half of July to July 15, 2014 of **\$630.00**, which is comprised of the outstanding balance owed for June of \$240.00 plus \$390.00 (1/2 of \$780.00).

The Landlord has succeeded 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:

Use and Occupancy to July 15, 2014	\$630.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$680.00
LESS: Security Deposit \$390.00 + Interest 0.00	<u>-390.00</u>
Offset amount due to the Tenant	<u>\$ -290.00</u>

Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days 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 **\$290.00**. 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: July 07, 2014

Residential Tenancy Branch

