



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 May 13, 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 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 May 13, 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 on May 18, 2014, five days after they were mailed, in accordance with section 90 of the Act; therefore, 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 testified that the parties entered into a written tenancy agreement that began on July 1, 2013. Rent is payable on the first of each month in the amount of \$700.00 and on July 1, 2013 the Tenant paid \$350.00 as the security deposit. The Tenant increased the television cable service and was required to pay the Landlord \$75.00 per month for the additional service.

The Landlord stated that when the Tenant failed to pay rent for April or May 2014 the Landlord posted a 10 Day Notice to the Tenant's door on May 3, 2014. The Notice

indicates \$1,500.00 was due on May 1, 2014 and includes rent of \$700.00 for April and \$700.00 for May plus \$100.00 that was outstanding for the cable bill.

The Landlord advised that after he served the Tenant with the 10 Day Notice in May 2014 the Tenant made two deposits directly into the Landlords bank account as follows: May 6, 2014 \$750.00 plus \$450.00 that was deposited on May 13, 2014. No additional payments have been received so now the Tenant has a balance owing for rent of \$200.00 for May plus \$700.00 June and \$700.00 for July. These amount do not include the outstanding cable bill. The Landlord is seeking an Order of Possession for as soon as possible.

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 6, 2014, three days after it was posted to his door, and the effective date of the Notice is **May 16, 2014**, in accordance with section 90 of the Act.

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 \$200.00 which was the balance due for May 2014 after the two deposits were received. 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 May 2014 unpaid rent of **\$200.00**.

As noted above this tenancy ended **May 16, 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 and July 2014 and not rent. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession. The Landlord is required to find replacement tenants as soon as possible; therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of June and up to July 15, 2014, in the amount of **\$1,050.00** (\$700.00

+ \$350.00). The Landlord is granted liberty to file another claim if he suffers additional losses as the result of this tenancy.

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:

Unpaid May 2014 rent	\$ 200.00
Use and Occupancy June 1 to July 15, 2014	1,050.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,300.00
LESS: Security Deposit \$350.00 + Interest 0.00	<u>-350.00</u>
Offset amount due to the Landlord	<u>\$ 950.00</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 **\$950.00**. 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 03, 2014

Residential Tenancy Branch

