



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee.

The landlord attended the teleconference hearing. During the hearing the landlord was given the opportunity to provide her evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The landlord testified that the Notice of Hearing, Application and documentary evidence were served on the tenant by registered mail on September 3, 2014. A registered mail receipt and tracking number were submitted in evidence. The landlord stated that the registered mail package which was address to the rental unit address of the tenant and included the name of the tenant was returned to sender on October 3, 2014. The landlord stated that to the best of her knowledge the tenant was still residing and occupying the rental unit at the time the registered mail package was mailed on September 3, 2014.

Section 90 of the *Act* states that documents served by registered mail are deemed served five days after they are mailed. Based on the above, I find that the tenant was deemed served as of September 8, 2014. I note that refusal or neglect on the part of the tenant does not constitute grounds for a Review Consideration Application.

Preliminary and Procedural Matters

At the outset of the hearing, the landlord testified that she deemed the tenant to have abandoned the rental unit as of September 25, 2014 and that she has since received an e-mail from the tenant as of October 1, 2014, in which the tenant provided her new mailing address which has been included on the cover page of this Decision for ease of reference. As a result, the landlord requested to withdraw her request for an order of possession as the tenant has already given up possession of the rental unit by abandoning the rental unit.

I note that the original hearing scheduled on Thursday, September 25, 2014 at 1:30 p.m., Pacific Time, did not take place due to a technological error and that both parties were e-mailed with the Notice of a Rescheduled Hearing dated September 26, 2014 which confirmed the rescheduled hearing for this date, Friday, October 3, 2014 at 1:30 p.m., Pacific Time. As the documentary evidence on the original file supports that the parties communicated by e-mail and the Notice of a Rescheduled Hearing were e-mailed to the parties using those e-mail address of the parties, I find the parties were sufficiently served with the rescheduled hearing date and time in accordance with section 71(2)(b) of the *Act*. As the tenant failed to attend the rescheduled teleconference hearing, and the tenant has been deemed to have been served with the Notice of Hearing, Application, documentary evidence and Notice of Rescheduled Hearing, the hearing proceeded in the tenant's absence.

Issue to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy agreement between the parties began on November 1, 2013 and ended as of September 25, 2014 when the tenant was deemed to have abandoned the rental unit by the landlord. The tenant paid a \$625.00 security deposit at the start of the tenancy which the landlord continues to hold.

The landlord applied for dispute resolution on September 2, 2014, after she issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") on the tenant's door dated August 18, 2014 via posting to the door of the tenant's rental unit on August 18, 2014, which was witnessed by third party, K.S. The 10 Day Notice has an

effective vacancy date of August 28, 2014, which automatically corrects under section 53 of the *Act* to August 31, 2014 as documents served by posting to the door are deemed served three days after they are posted pursuant to section 90 of the *Act*.

The landlord is seeking a monetary claim of \$2,550.00 comprised of the following:

| Item Description | Amount |
|-----------------------------------|-------------------|
| 1. Unpaid rent for August 2014 | \$1,250.00 |
| 2. Unpaid rent for September 2014 | \$1,250.00 |
| 3. Filing fee | \$50.00 |
| TOTAL MONETARY CLAIM | \$2,550.00 |

The landlord provided undisputed testimony confirming the amounts described in the table above. The landlord testified that the tenant did not dispute the 10 Day Notice after being served with the 10 Day Notice but refused to remove her personal belongings, which ultimately the landlord was forced to deal with as the tenant's abandoned personal property. The amount listed as owed by the tenant on the 10 Day Notice is \$1,250.00 due August 1, 2014. The landlord submitted a copy of the 10 Day Notice and a proof of service document in evidence to support his application.

Analysis

Based on the documentary evidence, undisputed testimony of the landlord, and on the balance of probabilities, I find the following.

Monetary claim of landlord – The landlord testified that the tenant failed to pay \$1,250.00 for August 2014 rent and \$1,250.00 for September 2014 rent and left some of her personal property in the rental unit when it was deemed abandoned as of September 25, 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** the tenant breached section 26 of the *Act* by failing to pay the rent as claimed by the landlord. Therefore, **I find** the landlord has met the burden of proof and **I grant** the landlord **\$2,500.00** comprised of \$1,250.00 in unpaid rent for August 2014, and loss of September 2014 rent of \$1,250.00.

As the landlord's application had merit, **I grant** the landlord the recovery of the **\$50.00** filing fee.

Monetary Order – I find that the landlord has established a total monetary claim of \$2,550.00 comprised of \$2,500.00 in unpaid rent and loss of rent, plus the \$50.00 filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit, which the landlord continues to hold, in the amount of \$625.00, which has accrued \$0.00 in interest to date. **I ORDER** the landlord to retain the tenant's full security deposit of \$625.00 in partial satisfaction of the landlord's monetary claim, and **I grant** the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of **\$1,925.00**. 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 established a total monetary claim of \$2,550.00 as indicated above. The landlord has been ordered to retain the tenant's full security deposit of \$625.00 in partial satisfaction of the claim. The landlord has been granted a monetary order under section 67 for the balance due by the tenant to the landlord in the amount of \$1,925.00. 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.

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: October 3, 2014

Residential Tenancy Branch

