



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 a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for compensation for damage or loss under the Act, regulation or tenancy agreement, for authorization to retain all or part of the tenant's security deposit, and to recover the cost of the filing fee.

The landlord and tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were provided the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. The tenant confirmed having received a copy of the 10 Day Notice submitted in evidence.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?

Background and Evidence

The parties agree that a periodic, month to month tenancy agreement began on June 1, 2014. Monthly rent in the amount of \$650.00 was due on the first day of each month. The tenant paid a security deposit of \$325.00 at the start of the tenancy which the landlord continues to hold.

The tenant confirmed being served with a 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") dated August 7, 2014, on August 8, 2014. The 10 Day Notice indicates an effective vacancy date of August 22, 2014. The tenant confirmed that she did not dispute the 10 Day Notice and did not pay the rent owed as indicated on the 10 Day Notice.

The landlord has claimed \$2,050.00 in unpaid rent, comprised of the following:

- \$100.00 owing for July 2014 rent

- \$650.00 owing for August 2014 rent
- \$650.00 owing for September 2014 rent
- \$650.00 owing for October 2014 rent

During the hearing, the tenant confirmed that she owed the amounts described above and as claimed by the landlord. The tenant stated that she plans on vacating the rental unit on Sunday.

Analysis

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

Order of possession - I find that the tenant failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The effective vacancy date of the Notice was August 22, 2014, which has passed. I find that the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on effective vacancy date of the 10 Day Notice, August 22, 2014. The tenant continues to occupy the rental unit. Therefore, **I grant** the landlord an order of possession effective **two days (2)** after service on the tenant.

Claim for unpaid rent – There is no dispute that the tenant owes the landlord \$2,050.00 in unpaid rent as claimed. 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 failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. **I find** the landlord has met the burden of proof and has established a monetary claim of **\$2,050.00** comprised of rent owed as claimed.

The landlord is holding a security deposit of \$325.00 which was paid by the tenant at the start of the tenancy and has accrued \$0.00 in interest since the start of the tenancy.

As the landlord has succeeded with their application, **I grant** the landlord the recovery of the filing fee in the amount of **\$50.00**.

Monetary Order – I find that the landlord is entitled to a monetary order 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 \$0.00 in interest as follows:

Unpaid portion of July 2014 rent	\$100.00
Unpaid August 2014 rent	\$650.00
Unpaid September 2014 rent	\$650.00
Unpaid October 2014 rent	\$650.00
Filing fee	\$50.00
Subtotal	\$2,100.00
<i>(Less tenant's security deposit including interest)</i>	<i>(\$325.00)</i>

TOTAL BALANCE OWING BY THE TENANT TO THE LANDLORD	\$1,775.00
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Based on the above, **I ORDER** the landlord to retain the tenant's full security deposit of \$325.00 in partial satisfaction of the \$2,100.00 amount owing to the landlord 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 **\$1,775.00**.

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 been ordered to retain the tenant's full security deposit of \$325.00 in partial satisfaction of the claim. The landlord has also been granted a monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of \$1,775.00. This order 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 9, 2014

Residential Tenancy Branch

