



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution and their evidence I find the Tenant was properly informed of the Landlord's intent of seeking money for the January 2015 rent as the Landlord changed his claim amount from \$1925.00 to \$2500.00 which included the \$575.00 owed for January.

Based on the aforementioned I find the Landlord 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* and he selected the box to claim *unpaid rent* instead. Therefore I amend the application to include a request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* and removed the request for *unpaid rent*, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on December 12, 2014, by the Landlord to obtain an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord provided evidence that the Tenant was served notice of this application and the hearing by registered mail on December 17, 2014. The Landlord Testified that the Canada Post tracking information confirmed that the Tenant signed for the registered mail on December 19, 2014. Therefore, I find the Tenant was sufficiently served with Notice of this hearing and I continued in the absence of the Tenant.

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 Tenant entered into a written month to month tenancy that began on June 1, 2014. Rent of \$575.00 is due on or before the first of each month and on June 1, 2014 the Tenant paid \$185.00 as the security deposit.

The Landlord testified that by December 1, 2014 the Tenant had failed to pay rent in the amount of \$1,925.00 that accumulated over three and half months. The Landlord submitted evidence that he posted a 10 Day Notice to the Tenant's door on December 3 2014 at 3:00 p.m. in the presence of a witness. The Tenant remains in the unit and has not made a payment towards rent or the past due amounts owing.

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 December 6, 2014, three days after it was posted to the door, and the effective date of the Notice is December 16, 2014.

The Tenant neither paid the rent nor disputed the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **December 16, 2014**, 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 \$1,925.00 that was due December 1, 2014, in accordance with section 26 of the Act which stipulates a tenant must pay rent in accordance with the tenancy agreement. Based on the aforementioned, I award the Landlord accumulated unpaid rent up to and including rent that was payable on December 1, 2014, in the amount of **\$1,925.00**.

As noted above this tenancy ended **December 16, 2014**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for January 2015. The Landlord will not regain possession of the unit until after service of the Order of Possession and will have to find a new tenant; therefore, I award the Landlord use and occupancy and any loss of rent for the entire month of January 2015 in the amount of **\$575.00**.

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:

Accumulated unpaid Rent to December 31, 2014	\$1,925.00
Use, occupancy, loss of rent to January 31, 2015	575.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,550.00
LESS: Security Deposit \$185.00 + Interest 0.00	<u>-185.00</u>
Offset amount due to the Landlord	<u>\$2,365.00</u>

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days after service upon the Tenant**. 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 Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order for **\$2,365.00**. 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: January 16, 2015

Residential Tenancy Branch

