



Dispute Resolution Services

Page: 1

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 the Landlord wrote the following in the details of the dispute:

Tenant has not paid April rent in the amount of \$707.00. The Termination notice was posted to the door by [Landlord's name] on April 9, 2015 and to date we have not received any money. I would like consideration for May 2015 rent - \$707. Total amount \$1414.00 plus consideration for the \$50.00 filing fee
[Reproduced as written excluding Landlord's name]

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 they clearly indicated their intention of seeking to recover the payment for occupancy after the effective date of the 10 Day Notice. Therefore, I amend the Landlord's 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 by the Landlord on April 24, 2015 seeking 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 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 hearing was conducted via teleconference and was attended by the Landlord who gave affirmed testimony. The Landlord provided oral evidence that the Tenant was served notice of this application and this hearing by registered mail on April 24, 2015. Canada Post tracking information was provided in the Landlord's testimony. Based on the submissions of the Landlord I find the Tenant was deemed served notice of this proceeding on April 29, 2015, five days after they were mailed, in accordance with section 90 of the Act. Accordingly, I proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Has the Landlord regained possession of the rental unit?

2. Has the Landlord proven entitlement to a Monetary Order?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a month to month tenancy that began on February 1, 2012. Market rent was listed as \$1,350.00 per month and the current subsidized rent was \$707.00 payable on the first of each month. On February 1, 2012 the Tenant paid \$350.00 as the security deposit.

The Landlord testified that when the Tenant failed to pay their April 1, 2015, rent the Landlord posted a 10 Day Notice to the Tenant's door on April 9, 2015. The Landlord submitted that the Tenant responded to the Landlord through an email the Tenant sent on May 4, 2015 which indicated that the Tenant would be vacating the rental unit at the end of May 2015 and that she would pay the outstanding rent at that time.

The Landlord stated that they checked the rental unit on May 25, 2015, and found that the Tenant abandoned the unit without paying the outstanding rent. The Landlord confirmed that they regained possession as of May 25, 2015 and began to clean up the unit to ready it to be re-rented. As such, they withdrew their request for an Order of Possession and wished to proceed with their request for a monetary order for April and May 2015 rent.

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 April 12, 2015 three days after it was posted to the door. Therefore, the effective date of the Notice was **April 22, 2015**. The Tenant neither paid the rent nor disputed the Notice. Rather, the Tenant vacated the rental unit sometime on or around May 24, 2015.

The Landlord claimed unpaid rent of \$707.00 that was due April 1, 2015, 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 find the Landlord has provided sufficient evidence and I award the Landlord unpaid rent for April 2015 in the amount of **\$707.00**.

As noted above this tenancy ended **April 22, 2015**, 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 May 2015. The Tenant remained in possession of the rental unit up to May 24, 2015 at which time she abandoned the rental unit without notice to the Landlord, which caused the Landlord to suffer a loss of rent for May 2015. Therefore, I award the Landlord use and occupancy and any loss of rent for the entire month of May

2015, in the amount of **\$707.00**. If the Landlord suffers additional loss they are at liberty to file another application for that loss.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

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 Rent April 2015	\$ 707.00
Use & Occupancy & Loss of Rent May 2015	707.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,464.00
LESS: Security Deposit \$350.00 + Interest 0.00	<u>-350.00</u>
Offset amount due to the Landlord	<u>\$1,114.00</u>

Conclusion

The Landlord withdrew their request for an Order of Possession.

The Landlord has been awarded a Monetary Order for **\$1,114.00**. 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 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: June 05, 2015

Residential Tenancy Branch

