



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on April 22, 2015 seeking to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; 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 two Landlords who both provided affirmed testimony. The application was filed listing only one of the two Landlords. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

The Landlords testified that on April 23, 2015 they personally served the Tenant with copies of their application for Dispute Resolution and hearing documents. Based on the submissions of the Landlords I find the Tenant was sufficiently served notice of this proceeding and I continued in absence of the Tenant.

The Landlords asserted that they had faxed a copy of their evidence to the Residential Tenancy Branch (RTB) on April 23, 2015; which comprised of the 10 Day Notice. As of the commencement of this hearing the Landlords' evidence had not been placed on the RTB file. Therefore, I continued to hear the Landlords' oral submission and granted them leave to fax a copy of the 10 Day Notice to the RTB no later than the close of business on June 5, 2015. A copy of the 10 day Notice was received by the RTB on June 05, 2015 at 9:35 a.m.

Issue(s) to be Decided

1. Is the applicant Landlord entitled to an Order of Possession?
2. Has the applicant Landlord proven entitlement to a Monetary Order?

Background and Evidence

The Landlords testified that the Tenant entered into a month to month written tenancy agreement that began on December 1, 2012. Rent of \$775.00 was due on or before the first of each month and on December 1, 2012 the Tenant paid \$387.50 as the security deposit.

The Landlords testified that when the Tenant failed to pay the full rent that was due April 1, 2015, the Landlord personally served the Tenant with a 10 Day Notice for \$725.00 unpaid rent on April 15, 2015. The Tenant remains in the rental unit and has made one more partial payment of \$500.00 on June 1, 2015.

The Landlord seeks an Order of Possession and monetary compensation of \$1,000.00 which is comprised of the balance owed for April 2015 rent plus May 2015 (\$725.00 - \$500.00 + \$775.00 for May 2015).

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 received the 10 Day Notice on April 15, 2015. Therefore, the effective date of the Notice is **April 25, 2015**.

The Tenant neither paid the rent in full nor disputed the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **April 25, 2015**, and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the Act. Accordingly, I approve the Landlords' request for an Order of Possession.

The Landlord claimed unpaid rent of \$725.00 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. The Tenant paid \$500.00 on June 1, 2015, leaving a balance owed for April 2015 rent of \$225.00. Based on the aforementioned, I award the Landlord unpaid rent for April 2015 in the amount of **\$225.00**.

As noted above this tenancy ended **April 25, 2015** in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the rental unit and not rent for May 2015. The Tenant occupied the rental unit for the entire month of May. Therefore, I award the Landlord use and occupancy for the full month of May 2015 in the amount of **\$775.00**. 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.

Conclusion

The Landlord has been successful with their application and has been granted an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order for **\$1,050.00** (\$225.00 + \$775.00 + \$50.00). This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do 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: June 09, 2015

Residential Tenancy Branch

