



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 was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55; and
2. A Monetary Order for unpaid rent - Section 67.

I accept the Landlord’s evidence that each Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenants did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on January 4, 2015. Rent of \$1,800.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected \$900.00 as a security deposit from the Tenant. The Tenant failed to pay full rent for April 2015 and on April 19, 2015 the Landlord personally served Tenant LH with a 10 day notice to end tenancy for unpaid rent (the “Notice”). The Notice indicates

outstanding rental arrears of \$1,600.00. The Tenants have not made an application for dispute resolution, have not paid the arrears or rent for May and June 2015 and have not moved out of the unit. The Landlord claims unpaid rent. It is noted that the Landlord's application sets out a claim only for April 2015 rent and that the application was not amended in advance of the hearing.

Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent (the "Notice") the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Section 55 of the Act provides that a landlord may request an order of possession of a rental unit by making an application for dispute resolution where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the Notice by making an application for dispute resolution and the time for making that application has expired.

Based on the Landlord's evidence I find that the Tenant was given a valid Notice. The Tenant has not filed an application to dispute the Notice and has not paid the outstanding rent. Given these facts, I find that the Landlord is entitled to an **Order of Possession**. I also find that the Landlord has established a monetary claim for **\$1,600.00** in unpaid rent.

Rule 2.11 of the Residential Tenancy Branch Rules of Procedure provides that an amendment to an application may only be made without the consent of the other party in advance of the hearing. As the Landlord did not amend the application to include a claim for unpaid May and June 2015 rent, I find that the Landlord's claim is restricted to the monetary amount set out in the application. The Landlord remains at liberty to make another application to claim unpaid rents for May and June 2015.

The Landlord is entitled to recovery of the \$50.00 filing fee for a total monetary amount of **\$1,650.00**. Setting the security deposit of **\$900.00** plus zero interest off the entitlement leaves **\$750.00** owed by the Tenant to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order that the Landlord retain the **deposit** and interest of \$900.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$750.00**. If necessary, this order may be filed in the 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 18, 2015

Residential Tenancy Branch

