



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also requested to keep the Tenant’s security deposit.

Both parties appeared for the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlord’s Application and written evidence; the Tenant confirmed that she had not provided any written evidence prior to the hearing.

Both parties were given an opportunity to present evidence, make submissions, and to cross examine the other party on the relevant evidence provided. The parties were also cautioned regarding a Tenant’s requirement to pay rent on time under Section 26(1) of the Act in relation to the oral tenancy that had been established between the parties pursuant to the definitions of a tenancy under the Act.

The Tenant confirmed receipt of the Landlord’s 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) on April 5, 2015 which was attached by the Landlord to the Tenant’s door on April 4, 2015. Section 46(5) provides that if a tenant does not make an Application to dispute a Notice for unpaid rent or does not pay the outstanding rent within five days of receiving the notice, then they are convulsively presumed that the tenancy has ended and the tenant must vacate the rental suite.

There was no evidence before me that the Tenant had made an Application to dispute the Notice. The Tenant and Landlord both agreed that at the time the Tenant received the Notice on April 5, 2015 there was an outstanding balance of rental arrears in the amount of \$1,300.00 which related to March and April 2015 rent. Both parties confirmed that by the expiry of the five day time limit (April 10, 2015), the Tenant had only paid

\$200.00 towards the \$1,300.00 rental arrears, leaving an outstanding balance of \$1,100.00 on April 10, 2015.

The Landlord explained that the Tenant had made further partial payments directly into his bank account towards this debt. The Landlord testified that he had sent two letters by registered mail to the Tenant explaining that the payments were being accepted for use and occupancy only. The Landlord submitted that letters, along with his Application made on April 16, 2015 which was served to the Tenant, were clear evidence that the tenancy was not re-instated and the Landlord still intended to end the tenancy.

The Tenant confirmed receipt of only one of the letters which informed her that the payments made after the Notice was received by her were for use and occupancy only. The Tenant testified that she did not receive the other one because she no longer has a key for the mail box.

At the conclusion of the hearing, I invited the parties to have a discussion about the ending or continuation of the tenancy. The Landlord indicated that he did not intend to continue the tenancy but he was willing to work with the Tenant on mutually ending it. I allowed the parties to engage in a lengthy discussion, after which the parties agreed to resolve the Landlord's Application in full during the hearing.

Settlement Agreement

Pursuant to Section 63 of the *Residential Tenancy Act* (the "Act"), the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

The parties **agreed** to settle the Landlord's Application in full under the following terms:

1. The tenancy will end on **June 30, 2015 at 1:00 p.m.** and the Tenant will vacate the rental unit on this date and time.
2. The Landlord is issued with an Order of Possession effective for this date and time. The order must be served on the Tenant and may then be filed and enforced in the British Columbia Supreme Court as an order of that court.
3. The parties agreed that at the time of this hearing the Tenant owed the Landlord \$1,750.00 in rental arrears which includes June 2015 rent which was payable on the date of this hearing.
4. The Tenant agreed to pay the rental arrears to the Landlord forthwith and agreed that the Landlord will be issued with a Monetary Order in the amount of \$1,750.00.

5. If payment is not made by the Tenant, the Monetary Order must be served on the Tenant and may then be filed and enforced in the Small Claims court as an order of that court.
6. In relation to the Landlord's claim for the Tenant's security deposit, if there any rental arrears outstanding in relation to the above Monetary Order, the Landlord may deduct this from the Tenant's security deposit at the end of the tenancy pursuant to Section 38(3) of the Act.

Copies of the above orders are attached to the Landlord's copy of this decision. The parties confirmed the above agreement during and at the end of the hearing and fully understood the nature of this agreement. No further questions or issues were raised before the hearing was concluded. The above orders are final and binding on the parties. This file is now closed.

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 01, 2015

Residential Tenancy Branch

