



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlords to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlords to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on May 20, 2015. Canada Post tracking numbers were provided by the landlords in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession for unpaid rent?
- Are the landlords entitled to a Monetary Order for unpaid rent?

- Are the landlords permitted to keep the tenant's security deposit?

Background and Evidence

The landlord AK testified that this tenancy started on August 21, 2014 for a month to month tenancy. Rent for this unit is \$750.00 per month and is due on the first day of each month. The tenant paid a security deposit of \$375.00 on August 21, 2015.

AK testified that the tenant has failed to pay rent for April, May, June and July, 2015. AK testified that a 10 Day Notice to End Tenancy for unpaid rent (the Notice) was served upon the tenant on April 04, 2015 by posting it to the tenant's door. The landlord has provided a copy of the Notice in evidence and the Notice has an effective date of April 14, 2015 and states that \$750.00 is outstanding for April, 2015. AK testified that no rent has been received by the tenant since the Notice was served. The tenant went away in April but did not vacate the rental unit and returned on June 18, 2015. The tenant said she would pay the outstanding rent but has failed to do so. The landlord seeks permission to amend their application to include unpaid rent for June and July, 2015 as the tenant has continued to live in the rental unit. The total amount of unpaid rent is now \$3,000.00.

The landlord seeks an Order to keep the security deposit of \$375.00 to offset against the unpaid rent. The landlord also seeks a Monetary Order for the balance of rent and the \$50.00 filing fee. The landlord requests an Order of Possession effective within two days of service to the tenant.

Analysis

I refer the parties to s 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied with the undisputed evidence before me that the tenant has failed to pay rent for April, May, June and July 2015. I will allow the landlord to amend the application to include unpaid rent for June and July as the tenant would be aware that rent was due on the first day of each month; however, with regard to July's rent, I find the landlords

are entitled to recover half a month's rent for July as the landlords may still be able to rent the unit for a period of time in July if the tenant vacates the unit as directed.

Therefore the landlords are entitled to recover rent arrears to the sum of **\$2,625.00**. If the tenant does not vacate the rental unit and the landlords are unable to re-rent the unit for the remainder of July, 2015 the landlords are at liberty to file a new application against the tenant to recover any loss of rental income for the remainder of July, 2015.

I Order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$375.00** in partial payment of the rent arrears.

As the landlords have been successful in this matter, the landlords are also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlords will receive a Monetary Order pursuant to s.67 of the *Act* for the balance owing as follows:

Outstanding rent	\$2,625.00
Less Security Deposit	(-\$375.00)
Plus filing fee	\$50.00
Total amount due to the landlord	\$2,300.00

I have reviewed all documentary evidence and accept that the tenant has been served with the Notice to End Tenancy pursuant to section 88 of the *Residential Tenancy Act*. The Notice is deemed to have been received by the tenant on April 07, 2015. The Notice states that the tenant has five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay all the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an Order of Possession pursuant to section 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlords' amended monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$2,300.00**. The Order must be served on the Respondent. If the Respondent fails to comply with the Order, the Order is enforceable through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenant. This Order must be served on the Respondent. If the Respondent fails to comply with this Order, the Order may be filed in the Supreme Court of British Columbia 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: July 06, 2015

Residential Tenancy Branch

