



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR; MNR; FF

Introduction

This is the Landlords' Application for Dispute Resolution seeking an Order of Possession; a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenant.

The Landlord PY and her witness gave affirmed testimony at the Hearing.

PY testified that the rental unit is a suite in the Landlords' basement. She stated that the Landlords reside in the upper portion of the house. The Landlords' Application was amended to reflect that the rental unit is a basement suite.

PY testified that she served the Tenant with the Notice of Hearing documents and copies of the Landlords' documentary evidence with a witness present on July 2, 2015. The Landlords' witness stated that she was present and saw PY tape the documents to the Tenant's door on July 2, 2015, at 9:03 a.m. PY testified that she knocked on the door, but the Tenant did not answer. She stated that she and the witness went upstairs to the Landlords' home for a cup of tea and heard the Tenant come home. PY and her witness stated that when the witness left at 9:30, the Notice of Hearing documents and documentary evidence were removed from the Tenant's door.

PY testified that she has had conversations with the Tenant since serving him with the Notice of Hearing documents and that he acknowledged receiving the Hearing package.

I find that the Tenant was duly served with the Notice of Hearing documents for the purpose of an application for an Order of Possession, pursuant to the provisions of Section 89(2)(d) of the Act. Section 89 of the Act does not include a provision for serving a party with Notice of Hearing documents by posting the documents on a door when seeking a monetary award; however, further to the provisions of Section 71(2)(b) of the Act, and in these particular circumstances, I find that the Tenant was sufficiently served on July 2, 2015, with respect to the Landlords' monetary claim.

Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in his absence. The teleconference remained open for 30 minutes.

Issues to be Decided

- Are the Landlords entitled to an Order of Possession?
- Are the Landlord entitled to a monetary award for unpaid rent for June and July, 2015?

Background and Evidence

PY gave the following testimony:

A copy of the tenancy agreement was provided in evidence, which indicates that this tenancy began on June 1, 2015 for a fixed term, expiring April 30, 2016. Monthly rent is \$695.00, due the first day of each month. The Tenant paid a security deposit in the amount of \$350.00. PY testified that she allowed the Tenant to move into the rental unit early, on May 29, 2015, because he stated he had nowhere else to go.

PY testified that the Tenant did not pay rent when it was due on June 1, 2015, but that he promised to pay it by June 21, 2015. The Tenant did not pay the outstanding rent on June 21, 2015, so the Landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent on June 22, 2015 (the "Notice"). PY stated that she hand delivered the Notice to the Tenant on June 22, 2015 at 5:00 p.m. The Landlords provided a proof of service document, signed by a witness, in evidence.

PY testified that the Tenant has not paid any of the outstanding rent for June, 2015, and that he has not paid rent for July, 2015. The Landlords seek a monetary award for unpaid rent in the amount of \$1,390.00 and asked if they could apply the security deposit towards their monetary award.

Analysis

I accept that the Landlords served the Tenant with the Notice to End Tenancy on June 22, 2015. I accept the Landlords' undisputed evidence that the Tenant did not pay all of the arrears, or file for dispute resolution, within 5 days of receiving the Notice.

Therefore, pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on July 2, 2015. I find that the Tenant is overholding and that the Landlords are entitled to an Order of Possession and a monetary award for unpaid rent in the amount of \$1,390.00.

Pursuant to Section 72(2)(b) of the Act, the Landlords may apply the security deposit towards partial satisfaction of the Landlord's monetary award.

The Landlords have been successful in their application and I find that they are entitled to recover the cost of the \$50.00 filing fee from the Tenant.

I hereby provide the Landlords with a Monetary Order, calculated as follows:

Unpaid rent	\$1,390.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,440.00
Less security deposit	- \$350.00
TOTAL AMOUNT DUE TO THE LANDLORDS AFTER SET-OFF	\$1,090.00

Conclusion

I hereby grant the Landlords an Order of Possession effective **2 days after service of the Order upon the Tenant**. This may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby grant the Landlords a Monetary Order in the amount of **\$1,090.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 24, 2015

Residential Tenancy Branch

