



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 dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the landlord for an order of possession for unpaid rent, for an order of possession for unpaid rent, for a monetary order for unpaid, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the security deposit, and to recover the cost of the filing fee.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”) and Application for Dispute Resolution (the “Application”) were considered. The landlord testified under oath that he served the Notice of Hearing and Application in three ways. Firstly, the landlord testified that he served the tenant by registered mail on June 5, 2015, however, did not have the tracking number to provide during the hearing. Secondly, the landlord testified that he posted the Notice of Hearing and Application to the tenant’s door on June 5, 2015 at approximately 11:00 a.m., and thirdly, that he personally served the tenant on June 5, 2015 at approximately 11:00 a.m. Based on the undisputed testimony of the landlord, I am satisfied that the tenant was sufficiently served in accordance with the Act.

During the hearing the landlord was given the opportunity to provide his evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the matters before me.

Preliminary and Procedural Matter

At the outset of the hearing, the landlord testified that since filing his application for unpaid rent for May 2015 of \$660, the tenant has since failed to pay \$660 rent for June 2015 and has been overholding in the rental unit beyond the end of the fixed term tenancy which ended on July 1, 2015. As a result, the landlord requested to amend the

application to include unpaid rent of \$660 for June 2015, plus \$276.77 for overholding from July 1, 2015 to July 13, 2015, the date of the hearing, which is calculated at \$660 monthly rent divided by 31 days for July which is \$21.29 per day, multiplied by 13 days. The landlord also stated that the tenant continues to occupy the rental unit. I find that this request to amend the application does not prejudice the respondent tenant as the tenant would be aware that rent is due pursuant to the tenancy agreement, and when the fixed term tenancy was scheduled to end. Therefore, I amend the application to \$1,596.77, which consists of \$660 for unpaid May 2015 rent, \$660 for unpaid June 2015 rent, and \$276.77 for 13 days of overholding in the rental unit for July 2015, pursuant to section 64(3) of the *Act*.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the filing fee under the *Act*?

Background and Evidence

The landlord testified that a fixed term tenancy began on March 15, 2015, which was supported by the tenancy agreement submitted in evidence and was scheduled to end July 1, 2015 and required the tenant to provide vacant possession of the rental unit to the landlord on July 1, 2015. Monthly rent in the amount of \$660 is due on the first day of each month. A security deposit of \$330 was paid by the tenant at the start of the tenancy, which the landlord continues to hold.

The landlord testified that he served the 10 Day Notice for Unpaid Rent or Utilities, (the "10 Day Notice") dated May 2, 2015 which indicates that \$660 was due on May 1, 2015 by posting it to the door of the tenant on May 2, 2015 at approximately 7:00 a.m. The tenant did not dispute the 10 Day Notice, failed to pay any rent for June 2015 and has paid nothing for July 2015 since overholding in the rental unit and continues to occupy the rental unit. The effective vacancy date of the 10 Day Notice is listed as May 15, 2015.

Analysis

Based on the documentary evidence and the undisputed oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of Possession – I accept the landlord's undisputed testimony that the tenant continues to occupy the rental unit and did not dispute the 10 Day Notice dated May 2, 2015. By serving the 10 Day Notice on the tenant's door on May 2, 2015, the tenant was deemed served pursuant to section 90 of the *Act* on May 5, 2015. The tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, May 15, 2015. Accordingly, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenant. Further, I find the tenancy ended on July 1, 2015 based on the fixed term tenancy agreement submitted in evidence which required the tenant to provide vacant possession of the rental unit back to the landlord as of July 1, 2015.

Claim for unpaid rent – I accept the landlord's undisputed testimony that the tenant has failed to pay a total of \$1,320 in rent comprised of \$660 owing for May 2015, \$660 owing for June 2015, plus \$276.77 for overholding in the rental unit for the first 13 days of July 2015, as the date of this hearing was on July 13, 2015.

Pursuant to section 26 of the *Act*, tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first day of each month. As the tenant continues to overhold inside the rental unit, the landlord will not regain possession of the unit until after service of the order of possession. I find the landlord has met the burden of proof and **I find** the landlord has established a monetary claim of **\$1,596.77** in unpaid rent for May and June of 2015, plus an overholding amount owed by the tenant to the landlord in the amount of \$276.77 comprised of the first 13 days of July 2015, as described above.

As the landlord has succeeded with their application, **I grant** the landlord the recovery of the **\$50** filing fee. The landlord continues to hold the tenant's security deposit of \$330.

I ORDER the landlord to retain the tenant's security deposit in full in partial satisfaction of the landlord's monetary claim. This results in a balance owing by the tenant to the landlord in the amount of \$1,316.77

Monetary Order – **I grant** the landlord a monetary order pursuant to section 67 of the *Act* in the net amount of **\$1,316.77** comprised \$1,646.77 in unpaid rent and the

overholding amount owed, plus the recovery of the \$50 filing fee, less the \$330 security deposit that the landlord has been ordered to retain in partial satisfaction of the landlord's total monetary claim.

Conclusion

The landlord has been granted an order of possession effective **two (2) days** after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been granted a monetary order under section 67 in the net amount of \$1,316.77. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 13, 2015

Residential Tenancy Branch

