



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD 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 or utilities, for a monetary order for unpaid rent or utilities, to keep all or part of the tenant’s security deposit, and to recover the cost of the filing fee.

The landlord and the tenant attended the teleconference hearing. The parties indicated that they understood the hearing process. An opportunity to ask questions about the hearing process was provided to the parties.

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

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 parties agreed that a month to month tenancy began on June 28, 2013. Monthly rent in the amount of \$850 was due on the first day of each month. A security deposit of \$425 was paid by tenant at the start of the tenancy, which the landlord continues to hold.

The tenant testified that she received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, (the "10 Day Notice") dated May 3, 2015 which indicates that \$850 was due on May 1, 2015. The tenant confirmed that she did not dispute the 10 Day Notice by filing an application and alleged that Residential Tenancy Branch staff stated that she did not need to dispute the 10 Day Notice. The effective vacancy date listed on the 10 Day Notice which was signed by the landlord is May 13, 2015.

The landlord's monetary claim is for \$4,250 comprised of the following:

1. Unpaid April 2015 rent	\$850
2. Unpaid May 2015 rent	\$850
3. Unpaid June 2015 rent	\$850
4. Unpaid July 2015 rent	\$850
5. Unpaid August 2015 rent	\$850
TOTAL	\$4,250

The tenant confirmed that no rent has been paid for the months of April 2015 through to August 2015 inclusive. The tenant alleges that the landlord reported that she did not live at the rental unit to the income assistance office worker, which is why she could not pay her rent. The landlord denied the tenant's allegation.

Analysis

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

Order of Possession – As the tenant did not dispute the 10 Day Notice dated May 3, 2015, I find 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, which was May 13, 2015. Accordingly, I grant the landlord an order of possession effective **two (2) days** after service on the tenant as the tenant continues to occupy the rental unit and has not paid rent for the months of April through to August 2015 inclusive. I find the tenant's testimony that Residential Tenancy Branch staff advised her that she did not have to dispute the 10 Day Notice to be vague and unbelievable as that information would be contrary to the *Act*. I note that the tenant did not provide any details about the name of the person who provided that information, or the date, time or location where she was advised of that information.

Claim for unpaid rent – I accept the landlord's testimony that the tenant failed to pay a total of \$4,250 in rent comprised of \$850 owing for April, May, June, July and August

2015 as the tenant confirmed that she has not paid rent for those months. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. As the tenant continues to occupy 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 **\$4,250** in unpaid rent or loss of rent for the months of April, May, June, July and August 2015 as the tenancy ended on May 13, 2015 and the tenant has been overholding in the rental unit ever since.

I do not afford any weight to the tenant's allegation that the landlord called the income assistance office worker to advise that the tenant did not live at the rental unit, as that would be counterproductive to the landlord's interest in receiving rent on a monthly basis. I also note that the tenant did not provide any corroborating evidence to support her allegation, such as a letter from the income assistance worker or a written statement from the income assistance worker.

As the landlord's application had merit, I grant the landlord the recovery of the **\$50** filing fee. The landlord continues to hold the tenants' security deposit of \$425.

I ORDER the landlord to retain the tenant's full security deposit of \$425 which has accrued no interest since the start of the tenancy, in partial satisfaction of the landlord's monetary claim. This results in a balance owing by the tenants to the landlord in the amount of \$3,875.

Monetary Order – I grant the landlord a monetary order pursuant to section 67 of the *Act* in the net amount of **\$3,875** comprised \$4,250 in unpaid rent and loss of rent, plus the recovery of the \$50 filing fee, less the \$425 security deposit that the landlord has been ordered to retain in partial satisfaction of the landlord's total monetary claim.

Conclusion

The landlord's application is successful.

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 ordered to retain the tenant's full security deposit of \$425 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order under section 67 in the net amount of \$3,875 owing by the tenant. This order must be served on the tenant and 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: August 10, 2015

Residential Tenancy Branch

