



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 a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "*Act*") to obtain an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to keep all or part of the security deposit or pet damage deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

The landlord's application for monetary compensation is being refused, pursuant to section 59(5)(c) of the *Act* as the landlord's application for dispute resolution did not provide sufficient particulars of their claim, and the landlord failed to provide a breakdown of his monetary claim as is required by section 59(2)(b) of the *Act*. For example, when the landlord was asked to provide a verbal breakdown of his monetary claim, the landlord first testified that \$500 was owed for June 2015 rent, and then changed his testimony to indicate that \$100 was not paid. The landlord later testified that utilities were part of the amount owed yet utilities were not mentioned in his Application dispute details. As I am not satisfied that the landlord or the tenant understood the monetary claim of the landlord due to insufficient particulars, the landlord is at liberty to re-apply and is reminded to include full particulars of their claim when submitting their application in the "Details of Dispute" section of the application. Furthermore, when seeking monetary compensation, applicants are encouraged to use the "Monetary Order Worksheet" (Form RTB-37) available on the Residential Tenancy

Branch website at www.rto.gov.bc.ca, under “Forms”. The amount listed on the monetary worksheet being claimed should also match the monetary amount being claimed on the application. Based on the above, I have only considered the landlord’s application for an order of possession for unpaid rent or utilities.

Issue to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities under the *Act*?

Background and Evidence

The parties agreed that a verbal tenancy began on March 1, 2015. The landlord testified that he was not aware that section 13 of the *Act* required a tenancy agreement to be in writing and called that requirement “legalese”. The parties agreed that monthly rent of \$500 is due on the first day of each month. The parties confirmed that the landlord requested and received a security deposit of \$300 from the tenant, which the landlord continues to hold. When the landlord was advised that the maximum amount he could have requested pursuant to section 19 of the *Act* is $\frac{1}{2}$ of the monthly rent which would have been \$250 in the matter before me, the landlord stated “that is legalese...just get on with it.”

The tenant confirmed that he received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated June 3, 2015 on June 5, 2015, when he found it posted to his rental unit door. The 10 Day Notice, which was submitted in evidence, indicates that \$400 was owed in rent as of June 1, 2015, and that \$100 was owed for utilities following a written demand dated June 1, 2015. I note that there was no written demand submitted in evidence. The effective vacancy date listed on the 10 Day Notice is June 12, 2015. The tenant testified that he did not dispute the 10 Day Notice. The tenant acknowledged that rent for August 2015 was not paid but failed to indicate how much rent for June was paid and on what date, if any. The landlord stated during the hearing that \$100 was owed for June rent and that July and August rent for 2015 was not paid at all.

Analysis

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

Order of possession – The tenant confirmed that he was served with the 10 Day Notice dated June 3, 2015 on June 5, 2015 when he found the 10 Day Notice posted to his door. The tenant confirmed that he did not dispute the 10 Day Notice and provided no evidence before me that he paid the rent in full as claimed on the 10 Day Notice. While I make no finding as to the amount of rent owed by the tenant, I am satisfied that the tenant owed some amount of rent as he failed to indicate when rent for June was paid, if any, and on what date, if any amount was paid. Furthermore, the tenant indicated that no rent for August has been paid, and that pursuant to section 46 of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the corrected effective vacancy date of the 10 Day Notice, which in the matter before me is June 15, 2015 as the effective vacancy date automatically corrections pursuant to section 53 of the *Act*. Based on the above, I find the tenancy ended on June 15, 2015 and that the tenant continues to overhold the rental unit. Pursuant to section 55 of the *Act*, I grant the landlord an order of possession **effective two (2) days** after service on the tenant.

As the landlord's claim had merit, **I grant** the landlord the recovery of the filing fee in the amount of **\$50**.

I ORDER the landlord to retain **\$50** of the tenant's \$300 security deposit, in full satisfaction of the \$50 filing fee. As a result, I find the tenant's security deposit balance is now \$250.

Conclusion

The landlord is cautioned to comply with section 19 of the *Act* and not to request or accept a security deposit that is more than ½ of the monthly rent in the future.

The landlord is further cautioned to comply with section 13 of the *Act* by ensuring that all future tenancy agreements are in writing.

The landlord's monetary claim is refused pursuant to section 59(5)(c) of the *Act* as the landlord's application for dispute resolution did not provide sufficient particulars of their claim, and the landlord was unable to provide a breakdown of his monetary claim as is required by section 59(2)(b) of the *Act*. The landlord is at liberty to apply for their monetary claim.

The landlord is granted an order of possession effective two (2) days after service on 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 \$50 of the tenant's security deposit as described above in full recovery of the landlord's filing fee. The tenant's new security deposit balance is \$250.

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 13, 2015

Residential Tenancy Branch

