



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNDC FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, 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 agent for the landlord (the "agent") attended the teleconference hearing. During the hearing the landlord and agent 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.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The landlord testified that the Notice of Hearing, Application and documentary evidence were served on the tenant by registered mail on June 25, 2015 and were mailed to the rental unit address where the tenant continues to reside. The agent stated that the registered mail package was returned to the landlord as "unclaimed". Documents served by registered mail are deemed served five days after they are mailed under the *Act*. Therefore, I find that the tenant was deemed served with the Notice of Hearing, Application and documentary evidence as of June 30, 2015. I note that failure or refusal to accept service does not constitute grounds for an Application for Review Consideration.

Preliminary and Procedural Matter

As the landlord did not request rent for August 2015 in the matter before me, I have not considered rent for August 2015. The landlord is at liberty to apply for rent after July

2015 as a result, however, all of the usual timelines of the *Act* would apply to any such application.

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?
- Should the landlord recover the cost of the filing fee?

Background and Evidence

The landlord testified that a verbal tenancy agreement was formed with the tenant on June 6, 2015 which started on June 1, 2015. The agent stated that on June 6, 2015 he spoke with the tenant who confirmed she would pay \$2,500 in rent on the first of each month and that she would pay the late rent by the following week, which the agent stated she failed to do. The agent stated that the tenant did not pay a security deposit.

The agent stated that the tenant was served personally with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated June 6, 2015 on June 6, 2015, at the rental unit. A copy of the 10 Day Notice was submitted in evidence and indicated that \$2050 in rent was owed as of June 1, 2015. The agent stated that the amount should have read \$2,500 as that was the verbally agreed upon amount of the monthly rent, and was a typographical error on his part. The agent testified that the tenant did not dispute the 10 Day Notice after being served and did not pay any amount of rent for June or July of 2015. The effective vacancy date listed on the 10 Day Notice is June 20, 2015.

The landlord is seeking a monetary order in the amount of \$5,000 comprised of the following:

Item Description	Amount
1. Unpaid June 2015 rent	\$2,500
2. Unpaid July 2015 rent	\$2,500
TOTAL MONETARY CLAIM	\$5,000

The landlord and agent testified that the tenant has failed to pay any rent for the months of June or July of 2015 and continues to occupy the rental unit. Both the landlord and agent requested an order of possession as a result.

Analysis

Based on the documentary evidence, undisputed testimony of the landlord, and on the balance of probabilities, I find the following.

Order of Possession - I accept the landlord's undisputed testimony that the tenant failed to pay the rent or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice, and that the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date on the 10 Day Notice which in the matter before me was June 20, 2015. Accordingly, I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

Monetary claim of landlord – The landlord testified that the tenant has failed to pay a total of \$5,000 in rent, comprised of \$2,500 for June 2015 and \$2,500 for July 2015. 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 the tenant breached section 26 of the *Act* by failing to pay \$2,500 for June 2015 and that the landlord suffered a loss of rent in the amount of \$2,500 for the month of July 2015. Therefore, I find the landlord has met the burden of proof and is entitled to **\$5,000** in unpaid rent and loss of rent.

As the landlord's application had merit, I **grant** the landlord the recovery of the \$50 filing fee pursuant to section 72 of the *Act*.

I find that the landlord has established a total monetary claim of **\$5,050** comprised of \$5,000 in unpaid rent and loss of rent, plus recovery of the \$50 filing fee.

I grant the landlord a monetary order pursuant to section 67 of the *Act* owing by the tenant to the landlord in the amount of **\$5,050**.

Conclusion

The landlord's application is successful.

The landlord has been 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 filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord has been granted a monetary order under section 67 in the amount of \$5,050. 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 17, 2015

Residential Tenancy Branch

