



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent; for an Order of Possession for cause; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the Residential Tenancy Act (Act), regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

During the hearing the landlord withdrew their application for a Monetary Order for money owed or compensation for damage or loss under the *Act*.

Service of the hearing documents, by the landlord's agents to the tenant, was done in accordance with section 89 of the *Act*; served in person by the landlord's agents on June 22, 2015.

The landlord's agents appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- 1) Is the landlord entitled to an Order of Possession for unpaid rent?
- 2) Is the landlord entitled to an Order of Possession for cause?
- 3) Is the landlord entitled to a Monetary Order to recover unpaid rent?
- 4) Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The landlord's agents (the landlord) testified that this month to month tenancy started on October 01, 2013. Rent for this unit is \$650.00 per month due on the 1st of each month. The tenant paid a security deposit of \$325.00 on October 01, 2013.

The landlord testified that the tenant failed to pay rent for May, 2015 of \$650.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on May 02, 2015. This was served in person to the tenant on that date. A proof of service document signed by a witness has been provided in documentary evidence. The Notice informed the tenant that the tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on May 12, 2015.

The landlord testified that since the Notice was served the tenant has also failed to pay rent for June, July and August, 2015 and has continued to reside in the rental unit. The total amount of outstanding rent for four months is now \$2,600.00

The landlords have applied to retain the tenant's security deposit of \$325.00 in partial payment of the rent arrears and a Monetary Order for the balance. The landlords have also applied for an Order of Possession to take effect as soon as possible.

The landlord testified that the tenant was also served with a One Month Notice to End Tenancy for cause. This Notice was served in person on April 28, 2015. The Notice has an effective date of May 31, 2015 and gave the following reasons to end the tenancy:

- 1) The tenant has allowed an unreasonable number of occupants in the unit
- 2) The tenant or a person permitted on the residential property by the tenant has
 - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) Put the landlord's property at significant risk;
- 3) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has
 - (i) Damaged the landlords' property
 - (ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii) Jeopardized a lawful right or interest of another occupant or the landlord
- 4) The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.
- 5) The tenant has assigned or sublet the rental unit without the landlords' written consent.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's application concerning unpaid rent and an Order of Possession for unpaid rent; I refer the parties to s. 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied from the undisputed evidence before me that there is outstanding rent for May, June, July and August, 2015 of \$2,600.00. Consequently, it is my decision that the landlord is entitled to recover this amount from the tenant and will receive a Monetary Order pursuant to s. 67 of the *Act*.

I Order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$325.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding.

The landlords will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent	\$2,600.00
Filing fee	\$50.00
Less security deposit	(-\$325.00)
Total amount due to the landlords	\$2,325.00

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Notice is deemed to have been served on May 02, 2015. There is no evidence to show that the tenant has paid any of the outstanding rent within five days and no evidence to show the tenant applied to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I grant the landlord an Order of Possession effective two days after service upon the tenant, pursuant to s. 55 of the *Act*.

As I have granted an Order of Possession based on the 10 Day Notice to End Tenancy for unpaid rent I am not required to deal with the landlord's claim for an Order of Possession for cause.

Conclusion

The landlord is provided with a formal copy of an Order of Possession. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$2,325.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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: August 18, 2015

Residential Tenancy Branch

