



Dispute Resolution Services

Page: 1

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 seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied 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 appeared at the teleconference hearing and gave affirmed testimony. The landlord was advised of the hearing process and was given the opportunity to ask questions about the hearing process during the hearing. A summary of the landlord's evidence 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 under oath that the Notice of Hearing, Application and documentary evidence were served on the tenant by registered mail on July 28, 2015. The landlord provided a registered mail receipt with tracking number in evidence and confirmed that the name and address matched the name of the tenant and the address of the rental unit and that the tenant was still living at the rental unit at the time they were served as the tenant continues to occupy the rental unit. The landlord testified that when he checked the Canada Post registered mail tracking website, it indicated that the tenant signed for and accepted the registered mail package on July 29, 2015, which I find the Canada Post registered mail tracking website supports. Based on the above, I find the tenant was served with the Notice of Hearing, Application and documentary evidence on July 29, 2015.

Preliminary and Procedural Matter

The landlord was advised that his claim for unpaid August 2015 rent was premature given that the tenancy agreement indicates that monthly rent was due on the 20th day of each month and the hearing occurred on August 19, 2015, the day before rent for August 2015 was due. As a result, I have not considered the landlord's request for unpaid August 2015 rent as that request is premature. The landlord is at liberty to reapply for unpaid August 2015 after August 20, 2015, if the rent for August 2015 is not paid in accordance with the tenancy agreement.

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

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy agreement began on April 20, 2015 and is scheduled to end on April 19, 2017. Monthly rent of \$1,750 is due on the 20th day of each month.

The landlord stated that the tenant was with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated July 16, 2015 by posting to the tenant's door on July 16, 2015. The 10 Day Notice indicates that \$5,250 in unpaid rent was owed as of June 20, 2015. The landlord clarified that he had not received the monetary order from the previous Arbitrator before issuing the 10 Day Notice, and that he has already been compensated by way of a Monetary Order for April, May and June 2015 rent and that given that his request for August 2015 rent was premature, the landlord is seeking the unpaid portion of July 2015 rent only in the amount of \$1,000 as the landlord did receive a \$750 payment from the tenant. The landlord testified that the tenant did not dispute the 10 Day Notice after being served and has only paid \$750 at the end of July 2015. The effective vacancy date listed on the 10 Day Notice is July 26, 2015.

The landlord testified that the tenant continues to occupy the rental unit and appears to be avoiding the landlord. The landlord is seeking an order of possession and \$1,000 for the unpaid portion of rent for July 2015, plus recovery of the cost of the filing fee.

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 July 26, 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 failed to pay the \$1,000 portion of July 2015 rent. 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 a \$1,000 portion of July 2015 rent. Therefore, I find the landlord has met the burden of proof and is entitled to **\$1,000** in unpaid 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 **\$1,050** comprised of \$1,000 in unpaid 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 **\$1,050**.

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 \$1,050. 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 20, 2015

Residential Tenancy Branch

