



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 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 retain all or a portion of the tenant’s security 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 attended the teleconference hearing and gave affirmed testimony. The landlord was given the opportunity to ask questions about the hearing process. During the hearing the landlord was given the opportunity to provide her evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

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 tenant was served with the Notice of Hearing, Application and documentary evidence by personal service at R.I. hospital on June 27, 2015 and that the tenant accepted service of the documents on that date at 11:30 a.m. The landlord stated that she was advised the tenant was at that hospital as a social worker called her regarding a housing issue. The landlord testified that the tenant signed a paper acknowledging that he received the documents served upon him. The landlord stated that she did not have a witness present on June 27, 2015. Without any evidence to the contrary, I accept the landlord’s testimony that the tenant was sufficiently served on June 27, 2015 in accordance with the *Act* as described by the landlord with the Notice of Hearing, Application and documentary evidence.

Preliminary and Procedural Matters

During the hearing, the landlord clarified that she was not applying for unpaid rent for the months of September 2014, October 2014, or November 2014, and was only applying for unpaid rent for the months of January 2015, February 2015, March 2015, May 2015, and June of 2015, and requested to add unpaid rent for July and August of 2015 to her monetary claim as the tenant continues to occupy the rental unit and that she has suffered a loss of rent as a result beyond June 2015. I find that the landlord's request to amend her application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. As a result, I permit the landlord to amend her monetary claim from the original amount of \$3,000 to \$4,200 pursuant to section 64(3) of the *Act*. The new amount of \$4,200 adds the loss of \$600 rent for the months of July and August of 2015 to the original claim of \$3,000 in unpaid rent for the months of January, February, March, May, and June of 2015.

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 recover the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The landlord testified that a month to month tenancy agreement began on April 1, 2013. The landlord testified that originally monthly rent in the amount of \$700 was due on the first day of each month, and was later reduced by consent of the parties to \$600 per month in the fall of 2013 and remained that amount since. The landlord testified that the tenant paid a \$350 security deposit at the start of the tenancy, which the landlord continues to hold.

The landlord testified that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, (the "10 Day Notice") dated April 16, 2014 was posted to the tenant's door on April 16, 2015 between 9:00 a.m. and 10:00 a.m. The landlord confirmed that the tenant was not in the hospital at that time and did not dispute the 10 Day Notice or pay the amount of rent owed on the 10 Day Notice, which was listed as \$2,700 owed as of April 1, 2015. The effective vacancy date on the 10 Day Notice is listed as May 1, 2015.

The landlord testified that the tenant refuses to vacate the rental unit and continues to occupy the rental unit and is seeking an order of possession as a result.

Analysis

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

Order of Possession – I accept the undisputed testimony of the landlord that the tenant has failed to pay rent as claimed. As the tenant did not dispute the 10 Day Notice dated April 16, 2015 or pay the full amount of rent as listed on the 10 Day Notice within five days of being deemed served with the 10 Day Notice on April 19, 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 in the matter before me was May 1, 2015. Accordingly, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I find the tenancy ended on the effective vacancy date of May 1, 2015.

Claim for unpaid rent/loss of rent – Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Further to my findings above, I find that the tenant 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. The tenant continues to occupy the unit. The landlord will not regain possession of the unit until after service of the order of possession. Given the above, I find the landlord has met the burden of proof by establishing that the tenant has failed to pay \$600 in rent for the months of January, February, March, May of 2015, and has suffered a loss of rent of \$600 for June, July and August of 2015, given that the tenant continues to overhold the rental unit even though the tenancy ended on May 1, 2015. Based on the above, I grant the landlord a total of **\$4,200** in unpaid rent and loss of rent for the months of January, February, March, May, June, July and August of 2015.

As the landlord has succeeded with their application, I grant the landlord the recovery of the **\$50** filing fee.

I find the landlord has met the burden of proof and I find the landlord has established a total monetary claim of **\$4,250** comprised of \$4,200 in unpaid rent and loss of rent, plus recovery of the \$50 filing fee. I find that while the tenancy ended on May 1, 2015, as the tenant continues to occupy the rental unit by overholding, the landlord is entitled to the loss of rent as claimed.

The tenant's security deposit of \$350 has accrued no interest since the start of the tenancy, which the landlord continues to hold.

I ORDER the landlord to retain the tenant's full security deposit of \$350 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$3,900**.

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 tenancy ended on May 1, 2015.

The landlord has been ordered to retain the tenant's full security deposit of \$350 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of \$3,900. 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

