



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR MNR 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, and to recover the cost of the filing fee. I note that according to the landlord's application, it is clear that the landlord was also applying for loss of rent beyond the effective date of the 10 Day Notice.

The tenant, two witnesses for the landlord, and the landlord attended the teleconference hearing and gave affirmed testimony. At the outset of the hearing, the hearing process was explained to the parties, as were expectations regarding conduct during the hearing. During the hearing the parties were given the opportunity to provide their evidence orally and ask questions about the hearing process. A summary of the affirmed testimony is provided below and includes only that which is relevant to the hearing.

The tenant testified under oath that she received the documentary evidence slid under her door and then later contradicted herself by stating that she was not served by the landlord. The tenant testified that she had a package of papers in front of her but did not go through them as the documents were related to a "criminal matter" and were "false". The landlord testified that the documents slid under the tenant's rental unit door were the same as the documents served on the Residential Tenancy Branch. I find that the tenant was sufficiently served as the tenant's testimony was contradictory and could not be relied upon as a result. I find that the tenant was sufficiently served with the landlord's documentary evidence in accordance with the *Act*. The tenant confirmed that she did not submit any documentary evidence in response to the landlord's application to the Residential Tenancy Branch.

Preliminary and Procedural Matters

At the outset of the hearing, the parties were advised of the conduct expected during the hearing and that interruptions by either party would not be tolerated. During the hearing, the tenant was cautioned on several occasions for continuing to interrupt myself and the landlord throughout the course of the hearing.

Eventually, after several cautions to the tenant to cease interrupting or face being muted for the remainder of the hearing, the tenant interrupted again and was muted for the remainder of the hearing. The tenant remained muted due to her inability to stop interrupting myself and the landlord. The hearing lasted a total of 41 minutes.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that they entered into a verbal tenancy agreement on June 1, 2015. The parties disputed the amount of monthly rent. The tenant testified that monthly rent was \$425 per month, while the landlord testified that monthly rent was \$850 per month. The landlord referred to documentary evidence section E-4, pages 4 and 8 as support that rent was more than the \$425 being claimed by the tenant. The documents referred to be landlord do indicate that rent was more than the \$425 being claimed by the tenant. The landlord testified that the tenant did not pay a security deposit or pet damage deposit. The landlord's monetary claim for \$2,975 is comprised of the following:

ITEM DESCRIPTION	AMOUNT
1. Unpaid portion of June 2015 rent	\$425
2. Unpaid July 2015 rent	\$850
3. Unpaid August 2015 rent	\$850
5. Unpaid September 2015 rent	\$850
TOTAL	\$2,975

A copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") was submitted in evidence. The 10 Day Notice is dated June 17, 2015. The landlord testified that he posted the 10 Day Notice on the tenant's door at 8:50 p.m. on June 17, 2015. The amount listed as owing on the 10 Day Notice was listed as \$850 due June 1, 2015. The landlord testified that since filing their application, the tenant has failed to pay \$850 for July, \$850 for

August, and \$850 for September of 2015. The tenant confirmed that she continues to occupy the rental unit. The tenant did not dispute the 10 Day Notice and failed to pay the full \$850 owing due June 1, 2015 as indicated on the 10 Day Notice. The effective vacancy date listed on the 10 Day Notice was June 28, 2015, which has passed.

The landlord is seeking a monetary order and an order of possession.

Analysis

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

Order of possession – I find the tenant has provided insufficient evidence to support that rent was \$425 per month. I find the landlord has provided sufficient evidence to support that rent was \$850 per month and not \$425 per month. As a result, I prefer the evidence of the landlord as the tenant failed to provide any supporting documentary evidence to support her testimony. As a result, I find that monthly rent was \$850 per month and due on the first day of each month.

Further to the above, as the tenant failed to pay the amount of \$850 within 5 days of being deemed served with the 10 Day Notice on June 20, 2015 and did not dispute the 10 Day Notice, 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 June 28, 2015. Therefore, pursuant to section 55 of the *Act*, I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

Claim for unpaid rent and loss of rent – As described above, I find the tenant has provided insufficient evidence to prove that rent was \$425 per month. Given my finding above that monthly rent was \$850 per month due on the first day of each month, and pursuant to section 26 of the *Act* that states a tenant must pay rent when it is due in accordance with the tenancy agreement, 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. Therefore I find that the landlord has met the burden of proof and has established a monetary claim of \$2,975 comprised of \$425 for the unpaid portion of June 2015 rent, \$850 for unpaid July 2015 rent, \$850 for unpaid August 2015 rent, and \$850 for unpaid September 2015 rent.

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

Monetary Order – I find that the landlord is entitled to a monetary order pursuant to section 67 of the *Act* as follows:

ITEM DESCRIPTION	AMOUNT
1. Unpaid portion of June 2015 rent	\$425

2. Unpaid July 2015 rent	\$850
3. Unpaid August 2015 rent	\$850
5. Unpaid September 2015 rent	\$850
6. Recovery of cost of filing fee	\$50
TOTAL	\$3,025

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 landlord has established a total monetary claim of \$3,025 as indicated above. I grant the landlord a monetary order under section 67 in the amount of \$3,025 as a result. 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: September 3, 2015

Residential Tenancy Branch

