



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for an Order of Possession for unpaid rent pursuant to section 55 and a monetary order for unpaid rent pursuant to section 67.

The tenant did not attend although the teleconference continued until 9:43 a.m. The landlord attended with his daughter as his assistant. They were given a full opportunity to be heard, to present evidence and to make submissions. The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent was personally served to the tenant on July 2, 2015. The landlord gave sworn testimony that the tenant was served with the Application for Dispute Resolution hearing package on July 17, 2015 by registered mail. The landlord submitted a Canada Post receipt and tracking number with respect to this mailing. Based on the undisputed and sworn evidence, both in testimony and in documents submitted for this hearing, I find that the tenant was duly served with the 10 Day Notice on July 2, 2015 and deemed served with the landlord's Application for Dispute Resolution hearing package on July 23, 2015 (5 days after its registered mailing).

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and a Monetary Order for unpaid rent?

Background and Evidence

The landlord's daughter and assistant ("Landlord SJ") gave evidence that the rental agreement for this premises began on June 1, 2015. Landlord SJ testified that the monthly rent of \$1000.00 is payable on the first of each month. Landlord SJ testified that the tenant agreed to pay a security deposit as part of this tenancy but never paid a security deposit. Landlord SJ testified that the tenant has given no notice to vacate the rental unit however she is unsure if he is one of the current occupants. She testified that there are several people, allowed into the unit by the tenant, residing in the unit.

The landlord has applied for an Order of Possession for unpaid rent in the amount of \$1500.00. The landlord testified that the tenant did not pay rent from the outset of his tenancy. The landlord testified that the tenant did not pay \$1000.00 rent in June 2015. The landlord testified that the tenant did not pay rent of \$1000.00 due on July 1, 2015. The landlord testified that, after the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent, the tenant continued to pay no rent for this tenancy. The landlord testified that the tenant did not pay rent in August or September 2015.

The landlord testified that the tenant continues to reside or allow others to reside in the rental unit. Landlord SJ testified that the tenant has been removing metal items from the premises, including parts of the gutters and the fence. The landlord testified that the tenant has not communicated with the landlord since the issuance of the 10 Day Notice.

The landlord also sought a monetary award of \$1500.00 for the unpaid rent as of the date of his application. He and his daughter both provided sworn testimony that no rent has been paid over the course of the four month tenancy.

Analysis

Based on the sworn testimony of the landlord and the corroborating testimony of his daughter, the tenant failed to pay the July 2015 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by July 12, 2015. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

I find that the landlord is entitled to receive an order for unpaid rent for the duration of this tenancy. Although the landlord's initial application sought only \$1500.00, I note that the tenant must be aware of his primary obligation of this tenancy as reflected in the tenancy agreement: to pay his monthly rent on time and in full in accordance with section 26 of the *Act*.

Section 26(1) of the *Act* establishes that "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." The undisputed, sworn and corroborated testimony of the landlord is that the tenant has paid no rent but resided and allowed other occupants to reside in the rental unit. I am issuing the attached monetary order that includes the landlord's application for \$1500.00 in unpaid rent for June and a portion of July 2015. I also include the current outstanding rental arrears as of the date of this hearing for a monetary award as follows;

Item	Amount
Unpaid Rent – June 2015	\$1000.00
Unpaid Rent – July 2015	1000.00
Unpaid Rent – August 2015	1000.00
Unpaid Rent – September 2015	1000.00
Total Monetary Order	\$4000.00

The landlord testified that the tenant failed to provide a security deposit with respect to this tenancy. The landlord also applied to have the tenant pay the security deposit with respect to this tenancy. However, I find this tenancy to be at an end and therefore, there is no need for the tenant to provide a security deposit. As no deposit was provided, there is no amount to offset the landlord's monetary award.

Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlord in the amount of \$4000.00.

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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: September 21, 2015

Residential Tenancy Branch

