



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing by conference call and gave undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on August 5, 2015. The landlord has submitted a copy of the Canada Post Registered Mail Customer Receipt Tracking Receipt as confirmation. In accordance with sections 89 and 90 of the Act, I find that the tenant was deemed served with the landlord's Application and documentary evidence five days after its registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for money owed or compensation or damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

This tenancy began on January 1, 2015 on a fixed term tenancy ending on June 30, 2015 as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$1,500.00 payable on the 1st day of each month and a security deposit of \$750.00 was paid. The agreement also allows for the tenant to pay 60% of utilities (hydro and gas).

The landlord clarified that there were originally 3 tenants as shown by the submitted tenancy agreement and that the named tenant/respondent failed to vacate the rental unit and still occupies the premises past the end of the fixed term tenancy of June 30, 2015. The landlord stated that he did not negotiate a new tenancy agreement with the tenant.

During the hearing the landlord provided undisputed affirmed testimony that the \$750.00 security deposit was not paid by the tenants and that the tenants failed to pay rent during the tenancy. The landlord stated that he is seeking \$4,500.00 in unpaid rent/lost rental income shown in detail below.

- \$900.00 for February 2015 Unpaid Rent
- \$900.00 for March 2015 Unpaid Rent
- \$900.00 for April 2015 Unpaid Rent
- \$900.00 for May 2015 Unpaid Rent
- \$900.00 for June 2015 Unpaid Rent
- \$1,500.00 for July lost rental income
- \$1,500.00 for August lost rental income

During the hearing it was noted and brought to the attention of the landlord that this total sum of \$7,500.00 did not equal the amount applied for in the application for dispute. The landlord stated that he did not have any records and relied on a hand written piece of paper for notes to indicate the rental arrears. The landlord stated that he was unable to provide any clarification for the difference in the amounts. The landlord stated that he has never served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent.

Analysis

I accept the undisputed affirmed testimony and the submitted documentary evidence of the landlord that a fixed term tenancy was entered into between these two parties ending on June 30, 2015. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on 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 find that the landlord has failed to provide sufficient particulars to satisfy me of his monetary claim. The landlord has provided testimony that the tenants have failed to pay a total of \$7,500.00 in unpaid rent/lost rental income during the tenancy. However, the landlord is unable to provide any clarification for this amount as it contradicts the landlord's written monetary claim of \$4,500.00. The landlord's application and details of dispute provide no clue as to the justification for this monetary claim. I find that the landlord's evidence in this regard to be conflicting and unreliable. The landlord's monetary claim is dismissed with leave to reapply.

Conclusion

I am granting the landlords an Order of Possession to be effective two days after notice is served to the tenant.

The landlord's monetary claim is dismissed with leave to reapply.

The landlord is provided with a formal Order in the above terms. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court in the Province 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 25, 2015

Residential Tenancy Branch

