



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPB MNR MNSD 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 and for breach of an agreement with the landlord, for a monetary order for unpaid rent or utilities, for authorization to keep all or part of the security deposit or pet damage deposit, and to recover the cost of the filing fee.

The landlord, the son-in-law of the landlord, a witness for the landlord, and tenant S.M. (the "tenant") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

The landlord's application for monetary compensation is being refused, pursuant to section 59(5)(c) of the *Act* as the landlord's application for dispute resolution did not provide sufficient particulars of their monetary claim, and the landlord was unable to provide a breakdown of his monetary claim as is required by section 59(2)(b) of the *Act*. For example, the landlord wrote on his application that he was claiming \$16,000 yet as of August 13, 2015, the date of the application, the tenants owed \$12,800 and during the hearing, the landlord provided an amount owing of \$20,400. As I am not satisfied that the landlord or the tenants understood the monetary claim of the landlord, the landlord is at liberty to re-apply and is reminded to include full particulars of their claim when submitting their application in the "Details of Dispute" section of the application. Furthermore, when seeking monetary compensation, applicants are encouraged to use the "Monetary Order Worksheet" (Form RTB-37) available on the Residential Tenancy Branch website at www.rto.gov.bc.ca, under "Forms". The amount listed on the

monetary worksheet being claimed should also match the monetary amount being claimed on the application.

In addition to the above, during the hearing, the tenant requested an adjournment so the tenants would have time to prepare documentary evidence and to arrange a support person to assist them during the hearing. The tenant's request was denied after considering the criteria set out under rule 6.4 of the Rules of Procedure. I find the tenant's request would prejudice the landlord as the landlord's application includes a request for an order of possession and I find the tenants have had ample opportunity to both prepare documentary evidence and arrange for a support person to attend the hearing, both of which the tenants failed to do by not submitting any documentary evidence and not arranging for a support person for the hearing.

As neither the landlord nor tenants submitted a copy of the signed residential tenancy agreement in evidence, and only the landlord stated that he had a copy before him of a signed tenancy agreement, the landlord was ordered to fax in a copy of a signed tenancy agreement after the hearing, which the landlord did.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that a fixed term tenancy began on June 1, 2014. The parties disputed the amount of monthly rent. The landlord testified that monthly rent as indicated on the tenancy agreement was \$2,200 per month, while the tenant stated that while the tenancy agreement indicated \$2,200 per month, the tenants did not sign the tenancy agreement, and that only \$2,000 per month was agreed upon by the parties, which the landlord denied. The parties agreed that the tenants paid a security deposit of \$1,100 at the start of the tenancy, which the landlord continues to hold.

The tenant testified that she received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated August 6, 2015 on August 11, 2015. Witness H.H. testified that he personally served both tenants at the rental unit address on August 7, 2015 around noon or 1:00 p.m. The 10 Day Notice, which was submitted in evidence, indicates that \$12,800 was owed in rent as of August 1, 2015. The effective vacancy date listed on the 10 Day Notice is August 7, 2015. The tenant confirmed that

the 10 Day Notice was not disputed and there was no evidence presented that the tenants paid the \$12,800 owing as listed on the 10 Day Notice.

The landlord requested an order of possession.

Analysis

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

Order of possession – Although the landlord and tenant disputed the date on which the tenants received the 10 Day Notice dated August 6, 2015, the fact remains that the tenants did not dispute the 10 Day Notice or pay the amount of rent owing. While I make no finding as to the amount of rent owed by the tenants, I am satisfied that the tenants owed some amount of rent as the tenant provided no evidence to support that rent was paid, and that pursuant to section 46 of the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the corrected effective vacancy date of the 10 Day Notice, which in the matter before me is August 21, 2015 if I use August 11, 2015 as the date the tenants received the 10 Day Notice, as the effective vacancy date automatically corrects pursuant to section 53 of the *Act*. Based on the above, I find the tenancy ended on August 21, 2015 and that the tenants are overholding in the rental unit.

Pursuant to section 55 of the *Act*, I grant the landlord an order of possession **effective two (2) days** after service on the tenants.

As the landlord's claim had merit, **I grant** the landlord the recovery of the filing fee in the amount of **\$100**. **I ORDER** the landlord to retain **\$100** of the tenant's \$1,100 security deposit, in full satisfaction of the \$100 filing fee. As a result, I find the tenant's security deposit balance is now \$1,000.

Conclusion

The landlord's monetary claim has been refused pursuant to section 59(5)(c) of the *Act* as the landlord's application for dispute resolution did not provide sufficient particulars of the landlord's monetary claim, and the landlord was unable to provide a breakdown of his monetary claim as is required by section 59(2)(b) of the *Act*. The landlord is at liberty to re-apply for their monetary claim.

The landlord is granted an order of possession effective two (2) days after service on the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The landlord has been ordered to retain \$100 of the tenants' security deposit as described above in full recovery of the landlord's filing fee. The tenants' new security deposit balance is \$1,000.

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 17, 2015

Residential Tenancy Branch

