



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on August 18, 2015, by the Landlords to obtain an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; to keep the 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 from the Tenants for this application.

The hearing was conducted via teleconference and was attended by the Landlord and his Agent (the Landlords). No one appeared on behalf of the Tenant. The Landlords provided affirmed testimony that the Tenant was served notice of this application and this hearing by registered mail on August 23, 2015. Canada Post tracking receipts were submitted in the Landlord's evidence.

Based on the submissions of the Landlords I find the Tenant was deemed served the notice of this hearing on August 28, 2015, five days after it was mailed, pursuant to section 60 of the Act. Accordingly, I proceeded in absence of the Tenant.

Issue(s) to be Decided

1. Have the Landlords proven entitlement to an Order of Possession?
2. Are the Landlords entitled to a Monetary Order?

Background and Evidence

The Landlords submitted evidence that the Tenant entered into a written fixed term tenancy agreement for the main floor of the rental unit that began on November 1, 2014 and was scheduled to end on October 31, 2015. As per the tenancy agreement, rent of \$1,000.00 was due on or before the first of each month and on October 9, 2014 the Tenant paid \$500.00 as the security deposit.

The Landlord C.J. testified that in July 2015, after the other tenants vacated the self-contained basement suite, the Tenant entered into a new verbal tenancy agreement to rent the entire house for \$1,400.00 per month. The new verbal tenancy agreement was effective July 15, 2015 and the Tenant paid to increase her security deposit to \$700.00.

When the Tenant failed to pay their August 1, 2015, rent the Landlord personally served a 10 Day Notice to an adult who resides with the Tenant on August 6, 2015. The 10 Day Notice indicated the Tenant owed \$1,400.00 in unpaid rent that was due on August 1, 2015.

Copies of payment receipts were submitted into evidence for payments made for "use and occupancy". Payments were made and receipts issued on September 1, 2015; September 4, 2015; September 9, 2015; and September 22, 2015. The latest receipt was dated October 18, 2015 for a payment of \$300.00. That receipt states the payment was applied as follows: \$199.25 to September 2015 and \$100.75 to October 2015 leaving a balance owed for October of \$1300.25.

The Landlords argued that the Tenant remains in possession of the rental unit and no rent has been paid towards November. They now seek a monetary order and an Order of Possession and a Monetary Order for \$1,300.25.

Analysis

The *Residential Tenancy Act* defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

Therefore, based on the above, I find that the undisputed terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant received the 10 Day Notice on August 6, 2015. Therefore, the effective date of the Notice was **August 16, 2015**.

Although the Tenant made payments towards use and occupancy those payments were not received within the required 5 day period. Also, the Tenant did not dispute the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **August 16, 2015**, and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlords claimed unpaid rent of \$1,400.00 that was due August 1, 2015, in accordance with section 26 of the Act which stipulates a tenant must pay rent in accordance with the tenancy agreement. Payments were received for the full August rent, as use and occupancy. Therefore, I dismiss the request for unpaid rent for August 2015, without leave to reapply.

As noted above this tenancy ended **August 16, 2015**, in accordance with the 10 Day Notice. Therefore I find the Landlords are seeking money for use and occupancy and any loss of rent for September, October and November 2015.

Taking into consideration that the Landlord's application was filed on August 18, 2015 and the hearing was not scheduled to be heard until November 2, 2015, I grant the Landlords leave to amend their application to seek to recover their losses for October and November 2015.

The Landlords submitted evidence that as of October 18, 2015 the Tenants owed \$1,300.25 for use and occupancy. Accordingly, I grant the claim for use and occupancy for October 2015 in the amount of **\$1,300.25**.

The evidence suggested the Tenants remain in possession of the rental unit as of this hearing which was held on November 2, 2015. The Landlords are required to attempt to re-rent the unit as soon as possible; however, they will not re-gain possession until they have served the Order of Possession. Accordingly, I find the Landlords are entitled to use and occupancy and any loss of rent up until November 15, 2015 in the amount of **\$700.00**.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Use & Occupancy October	\$1,300.25
Use & Occupancy & Loss of Rent November 2015	700.00
Filing Fee	50.00
SUBTOTAL	\$2,050.25
LESS: Security Deposit \$700.00 + Interest 0.00	-700.00
Offset amount due to the Landlord	<u>\$1,350.25</u>

Conclusion

The Landlords were primarily successful with their application and were granted an Order of Possession and a Monetary Order for \$2,050.25. The Monetary Order was offset against the Tenants \$700.00 security deposit leaving a balance due the Landlords of \$1,350.25.

The Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenants** and a Monetary Order for **\$1,350.25**.

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: November 02, 2015

Residential Tenancy Branch