



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM MNR MNDC FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the *Residential Tenancy Act* (the "Act") for a monetary order for unpaid rent or utilities, 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.

An agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. The landlord submitted a letter in evidence which supports that the agent was authorized to attend the hearing on behalf of the landlord and present the landlord's Application.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The agent testified that the Notice of Hearing and Application were served on the tenant by personal service on May 16, 2016 by the owner's sister, "Lotus" and was witnessed by M.C. Based on the undisputed testimony and without any evidence to prove to the contrary, I accept that the tenant was sufficient served under the *Act* with the Notice of Hearing and Application.

The agent stated that the landlord's documentary evidence was placed in the tenant's mailbox by hand.

Preliminary and Procedural Matter

At the outset of the hearing, the agent verbally requested an order of possession based on the mutual agreement of the parties. Furthermore, the agent stated that the landlord had originally requested an order of possession but was unsure of what box to check for an order of possession based on a mutual agreement to end the tenancy between the parties. As a result, I amend the landlord's Application pursuant to section 64(3) of the *Act* as I find the tenant would know or ought to have known that the landlord was also seeking an order of possession based on a mutual agreement as the landlord's details of dispute clearly articulate that although the parties signed a mutual agreement, the tenant continues to occupy the rental unit.

Issues to be Decided

- Is the landlord entitled to an order of possession based on a mutual agreement between the parties?
- Is the landlord entitled to a monetary order for unpaid rent or utilities and unpaid 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

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on July 15, 2015. Monthly rent in the amount of \$1,000.00 is due on the 15th day of each month. The tenant paid a security deposit of \$500.00 at the start of the tenancy of which the landlord returned \$400.00 to the tenant towards moving costs for the tenant, leaving a security balance of \$100.00 which the landlord continues to hold. I note the landlord provided a receipt signed by the tenant dated May 1, 2016 indicating "for returning back the deposit".

The agent referred to the signed Mutual Agreement to End a Tenancy document (the "Mutual Agreement") which is signed by the parties and indicates that the tenancy will end on May 1, 2016 at 9:00 p.m. The Mutual Agreement was submitted in evidence.

Regarding the landlord's monetary claim, the landlord has claimed \$4,880.00 as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Rent X 4 months at \$1,000.00 per month (March, April, May and June of 2016)	\$4,000.00
2. Unpaid utilities of \$80.00 per month X 11 months (August 2015 to June 2016)	\$880.00
TOTAL	\$4,880.00

The agent stated that the tenant has not paid rent for the months of March, April, or May of 2016. As rent for June 2016 is not overdue until after midnight of June 15, 2016 which was the same day as the hearing, the agent was advised that the landlord's claim for June 2016 loss of rent was premature.

Regarding unpaid utilities, the agent testified that the tenancy agreement did not include electrical utilities and that the tenant's portion is 40% of each electricity bill. As a result, the agent stated that the landlord has claimed for \$80.00 which was the tenant's 40% portion of the electricity bill. For the 11th month, the unpaid electricity bill is also premature as there was no evidence presented that the June 2016 electricity bill was due prior to June 15, 2016.

The landlord has also asked for the recovery of the cost of the filing fee.

Analysis

Based on the undisputed documentary evidence from the landlord and oral testimony provided by the agent during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that pursuant to section 44(1)(c) of the *Act* the parties mutually agreed in writing to end the tenancy on May 1, 2016 at 9:00 p.m. This is supported by the Mutual Agreement submitted in evidence. Therefore, I find the tenancy ended on May 1, 2016 at 9:00 p.m. and that the tenant has been over-holding in the rental unit without permission ever since that date and time. Therefore, I **grant** the landlord an order of possession effective **two (2) days** after service on the tenant.

Claim for unpaid rent and utilities – Firstly, as the tenant was served and did not attend the hearing, I find the Application of the landlord is unopposed by the tenant. Secondly, while I find the Application is unopposed I find that the landlord's claim for loss of June 2016 rent and unpaid utilities for June 2016 is premature as the tenant has

until midnight to pay June 2016 rent and utilities. Therefore, I grant the landlord leave to reapply for loss of June 2016 rent and unpaid June 2016 utilities if the tenant fails to pay either amount owing.

Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, 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. I find the landlord has met the burden of proof and has established a monetary claim of **\$3,000.00** comprised of rent arrears for the months of March, April and May of 2016 at \$1,000.00 for each of the three months.

Furthermore, I accept the agent's undisputed testimony which is supported by documentary evidence that the tenant failed to pay \$80.00 per month in utilities for the months of August 2015 to May 2016, which is a total of 10 months at \$80.00 per month for a total owing for unpaid utilities of **\$800.00**.

The landlord is holding a new security deposit balance of \$100.00 as the landlord has already returned \$400.00 to the tenant prior to this hearing. The security deposit has accrued no interest to date.

As the landlord has succeeded with their application, I grant the landlord the recovery of the filing fee in the amount of **\$100.00**.

Monetary Order – I find that the landlord is entitled to a monetary order 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:

Rent arrears owed by tenant for March to May 2016 inclusive	\$3,000.00
Unpaid utilities owed by tenant for August 2015 to May 2016 inclusive	\$800.00
Filing fee	\$100.00
Subtotal	\$3,900.00
<i>(Less tenant's remaining security deposit including interest)</i>	<i>-(\$100.00)</i>
TOTAL BALANCE OWING BY TENANT TO LANDLORD	\$3,800.00

Conclusion

The landlord's application is successful with the exception of June 2016 rent and June 2016 utilities which the landlord has leave to reapply for as those portions of this claim are premature.

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 \$3,900.00 as indicated above. The landlord is authorized to retain the tenant's full security deposit balance of \$100.00 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of \$3,800.00. 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: June 15, 2016

Residential Tenancy Branch