



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

The landlord attended the teleconference hearing. During the hearing the landlord 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.

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 landlord testified that the Notice of Hearing, Application and documentary evidence were served on the tenant by personal service on June 5, 2016 at approximately 3:00 p.m. at the rental unit and that the tenant accepted the paperwork from the landlord. Based on the above and without any evidence before me to prove to the contrary, I accept that the tenant was personally served with the Notice of Hearing, Application and documentary evidence on June 5, 2016 at the rental unit address.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

The landlord testified that a month to month tenancy between the parties began on March 15, 2016. The landlord stated that monthly rent in the amount \$450.00 was due on the first day of each month and that the tenant paid a \$225.00 security deposit at the start of the tenancy, which the landlord continues to hold. The landlord stated that the tenancy agreement was a verbal agreement between the parties.

The landlord applied for dispute resolution on June 3, 2016, after a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 3, 2016 (the "10 Day Notice") was served on tenant on May 3, 2016, personally at the rental unit at approximately 7:00 p.m. The 10 Day Notice indicates that \$900.00 was owed in rent as of May 2, 2016. The landlord stated that the tenant continues to occupy the rental unit and has not paid any rent for the months of April, May, June or July of 2016. The landlord testified that the tenant did not dispute the 10 Day Notice. The effective vacancy date listed on the 10 Day Notice is May 13, 2016.

The landlord is seeking a monetary order in the amount of \$1,800.00 comprised of the following:

Item Description	Amount
1. Unpaid rent for April 2016	\$450.00
2. Unpaid rent for May 2016	\$450.00
3. Loss of rent for June 2016	\$450.00
4. Loss of rent for July 2016	\$450.00
TOTAL MONETARY CLAIM	\$1,800.00

The landlord provided undisputed testimony regarding the amounts owing described above. The landlord also requested that if he is entitled to do so under the *Act*, he would like to offset the tenant's security deposit from the amount of unpaid rent owed by the tenant.

Analysis

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

Order of possession - I find that the tenant failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice on May 3,

2016. The effective vacancy date of the Notice is listed as May 13, 2016. I find the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which was May 13, 2016. The tenant continues to occupy the rental unit. Therefore, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenant.

Claim for unpaid rent and loss of rent – Firstly, as the tenant was served and did not attend the hearing, I find the Application of the landlord to be unopposed by the tenant. The landlord testified that \$1,800.00 in rent arrears and loss of rent is owed by the tenant as of the date of the hearing. 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 **\$1,800.00** comprised of rent arrears.

The landlord is holding a security deposit of \$225.00 which was paid by the tenant at the start of the tenancy and has accrued no interest since the start of the tenancy. As the landlord has succeeded with their application, **I grant** the landlord the recovery of the cost 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 as claimed	\$1,800.00
Filing fee	\$100.00
Subtotal	\$1,900.00
<i>(Less tenant's security deposit including \$0.00 interest)</i>	<i>-\$225.00</i>
TOTAL BALANCE OWING BY TENANT TO LANDLORD	\$1,675.00

Conclusion

The landlord's application is fully successful.

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 \$1,900.00 as indicated above. The landlord is authorized to retain the tenant's full security deposit of \$225.00 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 \$1,675.00. 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: July 5, 2016

Residential Tenancy Branch