



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: OPR MNR MNSD FF

For the tenant: MT CNR

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlords applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to retain all or part of the tenant’s security deposit and to recover the cost of the filing fee.

The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 6, 2016 (the “10 Day Notice”) and for more time to make an application to cancel a notice to end tenancy.

Landlord B.B. (the “landlord”) and the tenant attended the hearing which was held by way of teleconference. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence presented that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the outset of the hearing, the parties agreed that the tenancy would end on Sunday, September 4, 2016 at 1:00 p.m. and that an Order of Possession would be granted for that date and time. As a result, I find that I do not need to consider the 10 Day Notice further as the parties agree that the tenancy is ending. The parties did dispute the amount of rent owing so I will consider whether the landlord is entitled to a monetary order as a result and what should be done with the tenant's security deposit which the parties agreed was \$50.00 which the landlord continues to hold.

The landlord testified that in addition to the rent balance of rent owing for May 2016, and full rent owing for June and July of 2016, the tenant has subsequently not paid the rent for August 2016 and September 2016. As a result, the landlord requested to amend the application to include rent owed for August 2016 and understands that she could apply for loss of September 2016 rent at a later date once the tenancy ends and if she cannot suffers a loss of rent for the month of September 2016. I find that the landlord's request to amend the application does not prejudice the respondent tenant as the tenant was aware based on her own testimony that rent is due pursuant to the tenancy agreement. Therefore, I amend the application to include unpaid rent for August 2016 in the amount of \$500.00. I also provide leave to reapply for September 2016 loss of rent if necessary by the landlord.

Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

While a copy of a written tenancy agreement was submitted in evidence, the tenant stated that she did not sign the tenancy agreement. The parties agreed that a tenancy began on December 1, 2015 and that monthly rent is \$500.00 per month and is due on the first day of each month.

The landlords are claiming the following in unpaid rent:

- | | |
|---|----------|
| 1. Balance of May 2016 rent owing | \$100.00 |
| 2. Full amount of June 2016 unpaid rent owing | \$500.00 |
| 3. Full amount of July 2016 unpaid rent owing | \$500.00 |

4. Full amount of August 2016 unpaid rent owing \$500.00

TOTAL **\$1,600.00**

The tenant denied that she owed any balance for May 2016 but did confirm that she did not submit documentary evidence to support that she paid the full amount of May 2016 rent. The tenant agreed that rent for June, July and August 2016 was not paid.

Analysis

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

Order of Possession - As mentioned above, and pursuant to section 63 of the *Act*, the parties mutually agree that the tenancy will end on September 4, 2016 at 1:00 p.m. As a result, I **grant** the landlords an Order of Possession effective **September 4, 2016 at 1:00 p.m.**

Landlords' claim for unpaid rent – The landlord testified that the tenant has failed to pay \$100.00 of May 2016 rent, and owes \$500.00 in unpaid rent for the months of June, July and August of 2016. While the tenant admits that she did not pay rent for June, July or August, she denies that she owes \$100.00 for May 2016 rent. As a result, I have considered that the tenant has failed to provide any supporting documentary evidence to support her testimony and as a result of the tenant having the onus to prove that rent was paid, I find the tenant has failed to meet the burden of proof to support that full May 2016 rent was paid to the landlord.

Section 26 of the *Act* requires that a tenant pay rent on the day that it is due in accordance with the tenancy agreement. I have considered the tenant's application which indicates that she was "holding back rent". Therefore, I find that the tenant breached section 26 of the *Act* by failing to pay rent as claimed by the landlord in the total amount of \$1,600.00 described above. Therefore, I find the landlords have met the burden of proof and are entitled to monetary compensation of **\$1,600.00** in unpaid rent comprised of \$100.00 owing for the balance of May 2016 rent, and \$500.00 in unpaid rent for each month including June, July and August of 2016.

As the landlords' claim had merit, I grant the landlords the recovery of the cost of their filing fee in the amount of **\$100.00**.

I find that the landlords have established a total monetary claim of **\$1,700.00** comprised of \$1,600.00 in unpaid rent, plus the recovery of the cost of the filing fee in the amount

of \$100.00. This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit which the landlords continue to hold in the amount of \$50.00 which has accrued \$0.00 in interest to date. **I authorize** the landlords to retain the tenant's full security deposit of **\$50.00** in partial satisfaction of the landlords' monetary claim, and I grant the landlords a monetary order pursuant to section 67 of the *Act* for the balance owing to the landlords by the tenant in the amount of **\$1,650.00**.

I dismiss the tenant's application due to insufficient evidence.

Conclusion

The landlord's application is successful.

The tenant's application is dismissed.

The landlords are granted an order of possession effective September 4, 2016 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlords have established a total monetary claim of \$1,650.00 comprised of \$1,600.00 in unpaid rent for the months of May, June, July and August 2016 plus the recovery of the \$100.00 filing fee, less the tenant's \$50.00 security deposit which the landlords have been authorized to retain. Pursuant to section 67 of the *Act* the landlords are granted a monetary order in the amount of \$1,650.00 owing by the tenant to the landlords. 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: September 2, 2016

Residential Tenancy Branch