



Dispute Resolution Services

Page: 1

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 landlords' application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlords originally applied for an order of possession for unpaid rent or utilities, and for a monetary order for unpaid rent or utilities through the Direct Request Proceeding which was adjourned to a participatory hearing. An Interim Decision was issued dated July 14, 2016 which should be read in conjunction with this Decision.

The landlords appeared at the adjourned teleconference hearing and gave affirmed testimony. The landlords were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing.

As the tenant did not attend the reconvened hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Adjourned Hearing") was considered. The landlords testified under oath that the Notice of Adjourned Hearing, original Application for Dispute Resolution and documentary evidence was served on the tenant by personal service on July 21, 2016 in the afternoon at the rental unit and that the tenant accepted the package from the landlords. The landlords stated that a neighbour and their daughter D.C. were present as witnesses. In addition, the landlords testified that their amended Application claiming a higher amount of unpaid rent was subsequently served on the tenant on August 21, 2016 and was signed for by the tenant when it was served personally at the rental unit in the afternoon of August 21, 2016. Based on the information provided under oath and without any information before me to prove to the contrary I accept that the tenant was served in the manner described above.

Preliminary and Procedural Matter

The tenant called into the hearing late as the hearing concluded at 36 minutes. The tenant was advised that the hearing commenced at 9:30 a.m. and that she was 36 minutes late for the hearing that was concluded. The tenant was also advised that I had already granted the landlords an order of possession based on an undisputed 10 Day Notice and had already granted the landlords a monetary order and determined that the tenancy ended July 15, 2016 and that the tenant was over-holding in the rental unit since July 15, 2016.

Section 7 of the Rules of Procedure applies and states:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

[reproduced as written]

Based on the above, the hearing commenced at the scheduled time without the tenant as the tenant failed to call into the hearing at the scheduled time. The tenant called into the hearing after I had considered the undisputed evidence of the landlords and had rendered my Decision.

Issues to be Decided

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

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on June 1, 2016. Monthly rent in the amount of \$1,250.00 was due on the first day of each month. The tenant paid a security deposit of \$625.00 at the start of the tenancy which the landlords continue to hold.

The landlords are seeking the following:

ITEM #	DESCRIPTION	AMOUNT CLAIMED
1	Unpaid portion of June 2016 rent	\$25.00
2	Unpaid July 2016 rent	\$1,250.00
3	Loss of August 2016 rent	\$1,250.00

4	Loss of September 2016 rent	\$1,250.00
TOTAL		\$3,775.00

The landlords submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 2, 2016 (the "10 Day Notice"). The landlords testified that the 10 Day Notice was served on July 2, 2016 by placing it in the mail box of the tenant. The 10 Day Notice indicates that \$1,250.00 was owed as of July 1, 2016. The landlords stated that the tenant did not dispute the 10 Day Notice or pay rent for July, August or September of 2016. The landlords stated that the tenant also continues to owe \$25.00 for the unpaid portion of June 2016 rent.

The landlords are seeking an order of possession as the tenant continues to occupy the rental unit.

Analysis

Based on the undisputed documentary evidence and testimony of the landlords, and on the balance of probabilities, I find the following.

Order of Possession - I find that the tenant failed to pay the rent or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice, and that the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the corrected effective vacancy date on the 10 Day Notice which in the matter before me was July 15, 2016 pursuant to section 53 of the *Act*, as documents placed in a mail box are deemed served three days after they are served pursuant to section 90 of the *Act*. Accordingly, I grant the landlords an order of possession effective **two (2) days** after service on the tenant. The tenancy ended on July 15, 2016 and the tenant has been over-holding in the rental unit since that date.

Unpaid rent and loss of rent - The landlords testified that the tenant failed to pay a \$25.00 portion of June 2016 rent; all of July 2016 rent of \$1,250.00; and have suffered a loss of August 2016 rent of \$1,250.00 and September 2016 rent of \$1,250.00 as the tenant continues to occupy the rental unit. Section 26 of the *Act* states that tenant must pay rent when it is due in accordance with the tenancy agreement. I accept the landlords' undisputed testimony. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that \$1,250.00 in rent is due monthly. I find the landlords have met the burden of proof and I find the landlords have established a monetary claim of **\$3,775.00** as described above.

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

Monetary Order – I find that the landlords have established a total monetary claim in the amount of **\$3,875.00** comprised of \$3,775.00 in unpaid rent and loss of rent, plus the recovery of the cost of the \$100.00 filing fee. 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 \$625.00 which has accrued \$0.00 in interest since the start of the tenancy. I **authorize** the landlords to retain the tenant's full security deposit of \$625.00 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 **\$3,250.00**.

Conclusion

The landlords' application is successful.

The landlords have been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

The landlords have established a total monetary claim of \$3,875.00. The landlords have been authorized to retain the tenant's full security deposit of \$625.00 in partial satisfaction of the landlords' monetary claim. The landlords have been granted a monetary order pursuant to section 67 of the *Act* for the balance owing to the landlords by the tenant in the amount of \$3,250.00. 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: September 8, 2016

Residential Tenancy Branch