



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant's application filed July 17, 2012: CNR; FF

Landlord's application filed July 24, 2012: OPR; MNR; MND; FF

Introduction

This Hearing was convened to consider cross applications. The Tenant seeks to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to recover the cost of the filing fee from the Landlord.

The Landlord seeks an Order of Possession; a Monetary Order for unpaid rent, loss of revenue, NSF fees and the amount of the security deposit; and to recover the cost of the filing fee from the Tenant.

The Landlord gave affirmed testimony at the Hearing.

Preliminary Matters

The Landlord testified that the Notice of Hearing documents and copies of her documentary evidence were mailed to the Tenant, via registered mail, to the rental unit on June 26, 2012. The Landlord provided the tracking numbers for the registered documents.

Based on the Landlord's affirmed testimony I am satisfied that the Tenant was duly served with the Notice of Hearing documents by registered mail. Service in this manner is deemed to be effected 5 days after mailing the documents. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Landlord's application proceeded in his absence. **The Tenant's application is dismissed as abandoned, without leave to reapply.**

Issues to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order and if so, in what amount?

Background and Evidence

The Landlord gave the following oral testimony and documentary evidence:

On June 23, 2010, the parties signed a tenancy agreement, a copy of which was provided in evidence. The term of the lease is from July 1, 2012 to November 1, 2012. Monthly rent is \$2,850.00, due the first day of each month. The Tenant was required to pay a security deposit in the amount of \$1,450.00 at the beginning of the tenancy.

The Tenant's cheques for July rent and the security deposit were both returned to the Landlord, NSF.

The Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on July 13, 2012 (the "Notice") and served the Tenant on the same day. The Tenant has not paid any of the outstanding rent, or the security deposit. The Tenant did not pay rent that was due on August 1, 2012.

The Landlord seeks an Order of Possession and a monetary award, calculated as follows:

Unpaid rent for July, 2012	\$2,850.00
Security deposit	\$1,450.00
Loss of revenue for August, 2012	\$2,850.00
NSF fees (two cheques)	<u>\$50.00</u>
TOTAL	\$7,175.00

Analysis

Section 55 of the Act states that I must provide an Order of Possession to the Landlord if the Tenant makes an application to cancel a notice to end tenancy and his application is dismissed. Therefore, pursuant to the provisions of Section 55 of the Act, I hereby provide the Landlord an Order of Possession. I accept the Landlord's testimony that the Tenant was served with the Notice on July 13, 2012, and find that the tenancy ended on July 23, 2012 and the Tenant is overholding. **Therefore I hereby provide the Landlord an Order of Possession effective 2 days after service of the Order upon the Tenant.**

Based on the Landlord's undisputed testimony and documentary evidence provided, I accept that the Tenant has not paid rent for July or August, 2012. Section 26 of the Act states that a tenant must pay rent when it is due, whether or not the landlord complies with the Act, regulations or tenancy agreement unless the tenant has a right under the Act to deduct a portion of the rent. There was no evidence that the Tenant had any such right. Therefore, I grant the Landlord's application for unpaid rent for July and loss of revenue for August, 2012.

I dismiss the Landlord's application for a monetary award in the amount of the security deposit. A Tenant is required to pay a security deposit within 30 days of the date that it is due. If the Tenant does not pay it within that 30 days, the Landlord's remedy is to issue a One Month Notice to End Tenancy for Cause pursuant to the provisions of Section 47 of the Act.

The Landlord did not provide evidence that she incurred NSF charges from her bank, or if she did what the charges were. Therefore, her application for compensation with respect to NSF charges is dismissed.

The Landlord has been largely successful in her application and I find that she is entitled to recover the cost of the filing fee from the Tenant.

I hereby provide the Landlord a Monetary Order, calculated as follows:

Unpaid rent for July, 2012	\$2,850.00
Loss of revenue for August, 2012	\$2,850.00
Recovery of filing fee	<u>\$100.00</u>
TOTAL	\$5,800.00

Conclusion

The Tenant's application is **dismissed as abandoned**.

I hereby provide the Landlord an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord a Monetary Order in the amount of **\$5,800.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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: August 10, 2012.

Residential Tenancy Branch