



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord confirmed their intent on seeking money owed or compensation for damage or loss under the act regulation or tenancy agreement, by writing "*I request May and June rents and to retain security deposit*"

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as he clearing indicated his intention of seeking to recover the payment for June rent. Therefore I amend their application, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep all or part of the security and or pet deposit; money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord submitted documentary evidence which indicates the Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on May 18, 2013, by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find the Tenant was deemed served notice of this proceeding on May 23, 2013, five days after it was mailed, in accordance with section 90 of the Act. Therefore, I proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included a copy of the 10 Day Notice to end tenancy for unpaid rent; Canada Post receipts; and a receipt dated May 22, 2013 listing payment for May 2013 received for "use and occupancy only".

The Landlord stated that the parties entered into a written tenancy agreement that began on May 1, 2009. Rent is payable on the first of each month in the amount of \$1,030.00 and \$499.00 was paid by the Tenant on April 25, 2009, as the security deposit. When the Tenant failed to pay the May 1, 2013 rent a 10 Day Notice was personally served to the Tenant on May 2, 2013.

The Landlord advised that when he received the payment for May 2013, he informed the Tenant he would be proceeding with this hearing. He has sought to regain possession of the unit as soon as possible and to recover the unpaid rent for June, 2013.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant received the 10 Day Notice on May 2, 2013 and the effective date of the Notice is **May 12, 2013**, in accordance with section 46 of the Act.

The Tenant did not pay the rent within the required five days. The Landlord received payment on May 22, 2013, for use and occupancy only; which means the 10 Day Notice is still in effect and the tenancy has not been reinstated. Therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

As noted above this tenancy ended **May 12, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for June 2013, not rent. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and they will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of June 2013, in the amount of **\$1,030.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Use and Occupancy & Loss of June Rent	\$1,030.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,080.00
LESS: Security Deposit \$499.00 + Interest 0.00	<u>-499.00</u>
Offset amount due to the Landlord	<u>\$ 581.00</u>

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$581.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court 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: June 13, 2013

Residential Tenancy Branch

