



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Life Cycle Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee.

An agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their 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") was considered. The agent testified that the Notice was served on the tenant by registered mail on June 4, 2013. The agent provided a registered mail receipt with tracking number as evidence and confirmed that the name and address matched the name of the tenant and the rental unit address. The agent also confirmed that the tenant continues to reside in the rental unit. The agent stated that upon checking the online tracking information, the package had not been picked up by the tenant as of June 15, 2013. Documents sent by registered mail are deemed served five days after mailing under the *Act*. I find the tenant was duly served on the fifth day after mailing, in accordance with the *Act*. I note that refusal of service does not constitute a ground for Review.

Preliminary and Procedural Matter

During the hearing, the agent requested to include unpaid rent for July 2013 in the amount of \$729.00 as the tenant remains in the rental unit. The request of the agent was granted as it is reasonable that the tenant would be aware that rent is due on the date specified in the tenancy agreement. Therefore, I find that this request does not prejudice the tenant.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?

Background and Evidence

A month to month tenancy began on February 1, 2013. Monthly rent in the amount of \$729.00 was due on the first day of each month. The tenant paid a security deposit of \$364.50 at the start of the tenancy which the landlord continues to hold.

The agent confirmed service of the 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") dated May 21, 2013 by posting on the tenant's door on May 21, 2013 with an effective vacancy date of May 31, 2013, which was witnessed by another tenant, TK. The tenant did not dispute the 10 Day Notice and did not pay the full amount of rent owed within five days of receiving the 10 Day Notice.

The amount owing on the 10 Day Notice was listed as \$1,268.00. The agent stated that the tenant now owes \$2,716.00 in unpaid rent since filing their application as follows:

- \$529.00 for April 2013
- \$729.00 for May 2013
- \$729.00 for June 2013
- \$729.00 for July 2013

The landlord submitted the tenancy agreement, proof of service document, and the 10 Day Notice in evidence.

Analysis

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. The effective vacancy date of the Notice corrects automatically under the *Act* from May 31, 2013, to June 3, 2013. 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 of the Notice. The tenant continues to occupy the rental unit. Therefore, **I grant** the landlord an order of possession effective two days after service on the tenant.

Claim for unpaid rent and loss of rent – The landlord testified that the tenant still owes \$529.00 in unpaid rent for April 2013, \$729.00 in unpaid rent for May 2013, \$729.00 in unpaid rent for June 2013, and loss of rent of \$729.00 for July 2013. 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 **\$2,716.00** in unpaid rent and loss of rent as described above.

As the landlord has succeeded with their application, **I grant** the landlord the recovery of the filing fee in the amount of **\$50.00**.

Monetary Order – I find that the landlord is entitled to a monetary order as follows:

Unpaid April 2013 rent	\$529.00
Unpaid May 2013 rent	\$729.00
Unpaid June 2013 rent	\$729.00
Loss of July 2013 rent	\$729.00
Filing fee	\$50.00
TOTAL BALANCE OWING TO THE LANDLORD	\$2,766.00

Conclusion

I find that the landlord has proven their claim and is, therefore, entitled to an order of possession effective two 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.

I find that the landlord has established a total monetary claim of \$2,766.00 as indicated above. I grant the landlord a monetary order under section 67 in the amount of \$2,766.00. This order 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 02, 2013

Residential Tenancy Branch

