



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Helping Spirit Lodge Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR OPC OPQ OPB MNR FF O

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an order of possession for unpaid rent or utilities, for cause, due to the tenant not qualifying for subsidized housing, and due to the tenant breaching an agreement with the landlord, for a monetary order for unpaid rent or utilities, to recover the cost of the filing fee, and “other”, although details of “other” were not provided in the landlord’s application.

Two agents for the landlord (the “agents”) and a witness for the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agents were given the opportunity to provide their evidence orally and to call their witness who provided witness testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”) was considered. Agent OJ, testified that the Notice of Hearing was first served on the tenant via personal service on the tenant at the rental unit between noon and 4:00 p.m. on July 19, 2013, and a second time with the amended dispute resolution application and evidence package on August 15, 2013 at 10:54 a.m. at the rental unit, which was witnessed by third party, SA. The agents called SA as a witness. Witness SA testified under oath that he witnessed agent OJ personally serve the tenant at the rental unit on August 15, 2013 at 10:54 a.m. with a binder and papers. Based on the above, I find that the tenant was sufficiently served under the *Act*.

Issues to be Decided

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

Background and Evidence

According to the document evidence submitted in evidence which included the current and previous tenancy agreements, this tenancy started on May 1, 2013 and on July 31, 2013, reverted to a month to month tenancy. Monthly market rent of \$943.00 was due on the first day of each month, and while the tenant qualified for a rent subsidy, the subsidized monthly rent was \$375.00 per month. The tenant paid a security deposit of \$300.00 in June 2009, at the start of an earlier tenancy agreement which was carried over to the current tenancy agreement, which the landlord continues to hold.

The agent OJ confirmed service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated August 2, 2013 by posting to the tenant's door on August 2, 2013, which was witnessed by third party, LK. A proof of service document was submitted in evidence which supports the testimony of agent OJ. The 10 Day Notice indicated an amount of \$568.00 owing as of August 1, 2013, and had an effective vacancy date of August 12, 2013. The tenant did not dispute the 10 Day Notice or pay the amount of rent owed within 5 days of being served the 10 Day Notice.

Agent OJ testified that the rental subsidy for the tenant expired on July 31, 2013. The agents referred to a letter dated July 18, 2013 in Tab 10 of the binder submitted in evidence. In that letter, the landlord writes to advise the tenant that due to her rental subsidy expiring as of July 31, 2013, the new rent will be \$943.00 as of August 1, 2013.

The landlord is seeking an order of possession for unpaid rent, a monetary order for unpaid rent, and the recovery of their filing fee.

As the tenant did not dispute the 10 Day Notice or pay the amount listed on the 10 Day Notice within 5 days of being served the 10 Day Notice, I do not find it necessary to consider any further evidence regarding the 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") issued by the landlord, and the landlord's request for an order of possession based on the 1 Month Notice.

The landlord submitted a binder of evidence, which included but is not limited to the 10 Day Notice dated August 2, 2013, the tenancy agreement, documents supporting the tenant's rental subsidy ending July 31, 2013 and other documents.

Analysis

Based on the documentary evidence and the undisputed testimony provided during the hearing, 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 ends on the corrected effective date of the Notice. The 10 Day Notice indicates an effective vacancy date of August 12, 2013 which automatically corrects under the *Act*, to August 15, 2013. The tenant continues to occupy the rental unit. Accordingly, I **grant** the landlord an order of possession **effective two (2) days** after service on the tenant. I do not need to consider the 1 Month Notice issued by the landlord, as the landlord has been successful with their application for an order of possession based on the undisputed 10 Day Notice.

Claim for unpaid rent – The agents testified that the tenant failed to pay \$568.00 of the \$943.00 owing for August 2013 rent, which was due on August 1, 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. The evidence clearly supports that the rental subsidy for the tenant expired on July 31, 2013 and that current rent was \$943.00 as of August 1, 2013. As the tenant continues to occupy the rental unit, the landlord will not regain possession of the unit until after service of the order of possession and has incurred a loss as a result. I **find** the landlord has met the burden of proof. Therefore, I **find** the landlord has established a monetary claim of **\$568.00** for the unpaid port of August 2013 rent.

As the landlord has succeeded with their application, I **grant** the landlord the 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 tenant's security deposit which has accrued \$0.00 in interest as follows:

Unpaid portion of August 2013 rent	\$568.00
Filing fee	\$50.00
Subtotal	\$618.00
<i>(Less Tenant's Security Deposit of \$300.00)</i>	<i>-(\$300.00)</i>
TOTAL AMOUNT OWED TO THE LANDLORD	\$318.00

Conclusion

I find that the landlord has proven their claim and is, therefore, entitled to an order of possession effective two (2) 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 \$618.00 as indicated above. I authorize the landlord to retain the tenant's full security deposit of \$300.00 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of \$318.00. 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: August 23, 2013

Residential Tenancy Branch

