



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, OPB, MND, MNR,

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for unpaid rent and for the breach of a material term of her tenancy agreement pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit, site or property pursuant to section 67; and
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The tenant applied for the cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46 of the *Act*.

The tenant did not attend this hearing, although I waited until 11:20 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the dispute resolution proceeding The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the tenant's participation in this hearing, I order her application dismissed without liberty to reapply.

The landlord's daughter testified that she handed the tenant the 10 Day Notice late in the afternoon on July 12, 2013. The landlord testified that she witnessed her son hand

the tenant a copy of the landlord's dispute resolution hearing package to the tenant on August 15, 2013. She said that the tenant also signed a document confirming that she had received that package. I am satisfied that the landlord served the above documents to the tenant in accordance with the *Act*.

At the hearing, the landlord withdrew her application for a monetary award for damage. She did so as she has not yet been able to gain vacant possession of the rental unit and assess the true extent of the damage arising out of this tenancy and conduct the necessary repairs. The landlord's application for a monetary award for damage is withdrawn. The landlord is granted leave to reapply for this item once she has gained vacant possession of the rental unit and conducted repairs.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Background and Evidence

This periodic tenancy began on May 12, 2013. Monthly rent is set at \$750.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$375.00 security deposit paid on May 12, 2013.

The landlord issued the 10 Day Notice when she had not received \$200.00 of the tenant's monthly rent by July 12, 2013. She testified that the tenant has not paid anything further to her since the tenant received the 10 Day Notice. The landlord applied for a monetary award of \$950.00, comprised of \$200.00 in unpaid rent owing for July 2013 and \$750.00 in unpaid rent owing for August 2013.

Analysis

There is undisputed evidence that the tenant failed to pay the \$200.00 amount identified as unpaid rent owing as of July 12, 2013 on the 10 Day Notice, within five days of receiving the 10 Day Notice. Although the tenant applied for a cancellation of the 10 Day Notice pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice, I do not find the reasons outlined in her application sufficient to cancel the 10 Day Notice. Her primary concern appears to have been that the landlord cited an incorrect effective date to end this tenancy, July 11, 2013, the day before the 10 Day Notice was served to her. In accordance with section 53 of the *Act*, incorrect effective dates are automatically changed to the earliest date that could comply with the date the

Notice was issued. In this case, the corrected effective date to end this tenancy was July 22, 2013.

As I am satisfied that the tenant has not paid the rent identified as owing on the 10 Day Notice in full within 5 days of being issued the 10 Day Notice, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the landlord's undisputed evidence, I find that the landlord is entitled to a monetary award of \$200.00 in unpaid rent owing from July 2013 and \$750.00 in unpaid rent owing from August 2013. I allow the landlord to retain the tenant's security deposit plus applicable interest to partially satisfy the monetary award issued in this decision.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Based on the undisputed evidence before me, I issue a monetary award in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and to retain the tenant's security deposit:

Item	Amount
Unpaid Portion of June 2013 Rent	\$200.00
Unpaid July 2013 Rent	750.00
Less Security Deposit	-375.00
Total Monetary Order	\$575.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application for a monetary Order for damage is withdrawn. The landlord is at liberty to reapply for a monetary Order for damage once she obtains possession of the rental unit, assesses the extent of damage to the rental unit and conducts repairs as required.

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 22, 2013

Residential Tenancy Branch

