



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on April 7, 2014, 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, for 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 parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord, and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

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 undisputed evidence was that the parties entered into a month to month tenancy that began on January 15, 2011. Rent is payable on the first of each month in the amount of \$825.00 and on December 6, 2010 the Tenant paid \$412.50 as the security deposit.

The Landlord affirmed that as of March 18, 2014, the Tenant failed to pay \$2,465.00 in outstanding rent which had accumulated since January 2014. On March 18, 2014, the Landlord posted a 10 Day Notice to end tenancy for unpaid rent to the Tenants' door.

The Landlord stated that the Tenant vacated the property some time mid May 2014 and did not pay rent for April or May 2014. The Landlord seeks to obtain a Monetary Order for all of the unpaid rent totalling \$4,115.00.

The Tenant testified and confirmed that she had not paid rent since January 2014. She vacated the rental unit on May 11, 2014. She stated that she fell behind on her rent payments because her Employment Insurance benefits stopped. She admitted to owing the Landlord the \$4,115.00 and agreed to discuss payment arrangements with him after this hearing.

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 is deemed to have received the 10 Day Notice on March 21, 2014, three days after it was posted to the door, and the effective date of the Notice is March 31, 2014, in accordance with section 90 of the Act.

The Tenant did not dispute the Landlord's claim or the 10 Day Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **March 31, 2014**, pursuant to section 46(5) of the Act. The Landlord has regained possession of the rental unit; therefore, there is no need to issue an Order of Possession.

The Landlord claimed unpaid rent of \$2,465.00 that was due March 1, 2014, in accordance with section 26 of the Act which stipulates a tenant must pay rent in accordance with the tenancy agreement. Based on the aforementioned, I award the Landlord unpaid rent in the amount of **\$2,465.00**.

As noted above this tenancy ended **March 31, 2014**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for April and half of May 2014. The Tenant has had possession of the rental unit until mid May 2014; therefore, I award the Landlord **\$1,237.50** (\$825.00 + \$412.50) for use and occupancy.

The Landlord has succeeded 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:

Unpaid rent to March 31, 2014	\$2,465.00
Use & Occupancy for April and half of May 2014	1,237.50
Filing Fee	<u>50.00</u>
SUBTOTAL	<u>\$3,752.50</u>
LESS: Security Deposit \$412.50 + Interest 0.00	<u>-412.50</u>
Offset amount due to the Landlord	<u>\$3,340.00</u>

Conclusion

The Landlord has been awarded a Monetary Order for **\$3,340.00**. 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: May 30, 2014

Residential Tenancy Branch

