



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 May 20, 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 Landlord affirmed that the Tenant was served with copies of the Landlord's application for dispute resolution and Notice of dispute resolution hearing, on May 23, 2014, by registered mail. Canada Post tracking information was provided in the Landlord's testimony. Based on the submissions of the Landlord I find the Tenant was deemed served notice of this proceeding on May 28, 2014, five days after they were mailed, in accordance with 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 issued May 1, 2014.

The Landlord stated that the parties entered into a written tenancy agreement that began approximately three years ago. Rent was payable on the first of each month in the amount of \$730.00 and they paid \$350.00 as the security deposit at the beginning of the tenancy.

The Landlord testified that on May 1, 2014 he served the Tenant a 10 Day Notice for April 1, 2014 unpaid rent, by posting it to the Tenant's door. The Tenant did not pay rent for April, May, June or July 2014.

The Landlord advised that the Tenant returned the keys to him on Monday July 7, 2014 but when the Landlord check the unit on July 9, 2014 there were still possessions inside the unit. He stated that those possessions appeared to be garbage, but he wanted to be safe and still have the Order of Possession issued, just in case the Tenant returns.

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 May 4, 2014, three days after it was posted to his door, and the effective date of the Notice is **May 14, 2014**, in accordance with section 90 of the Act. The Tenant did not pay the rent and did not dispute the Notice, 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.

The Landlord claimed unpaid rent of \$1,460.00 which was due May 1, 2014 and included April and May 2014 rent (2 x \$730.00). The Tenant failed to pay rent in accordance with the tenancy agreement which is a breach of section 26 of the Act. Accordingly, I award the Landlord a Monetary Award for unpaid rent of **\$1,460.00**.

As noted above this tenancy ended **May 14, 2014**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for June and July, not rent. The Tenant had possession of the unit until July 7, 2014, when he returned the keys, but has left possessions inside the unit, which has caused the Landlord to question if the Tenant planned on returning. Therefore, I find the Landlord will not fully regain possession of the unit until after service of the Order of Possession and then they will have to work to find replacement tenants.

Based on the above, I find the Landlord is entitled to compensation for use and occupancy and any loss of rent for the entire month of June 2014 plus half of July to July 15, 2014, in the amount of **\$1,095.00** (\$730.00 + \$365.00).

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 Tenant's pet and security deposit plus interest as follows:

Unpaid rent April and May 2014	\$1,460.00
Use & Occupancy June 1 – July 15, 2014	1,095.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,605.00
LESS: Security Deposit \$350.00 + Interest 0.00	<u>-350.00</u>
Offset amount due to the Landlord	<u>\$2,255.00</u>

Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days after service 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 Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order for **\$2,255.00**. 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: July 10, 2014

Residential Tenancy Branch

