



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNSD MNR MNDC FF

Preliminary Issues

The Landlord's Agent, hereinafter referred to as Agent, stated that two identical applications were filed because they were not certain of the correct spelling of the Tenant's first name and because they were not able to serve the Tenant with the Notice of hearing documents on the first application within the required time frames.

Based on the submissions of the Agent I have listed the Tenant's name with both spellings in the style of cause. As service was not conducted for the application on file # and because the subsequent application is requesting the identical orders as the first application, I dismiss the application on file #, without leave to reapply, and proceeded with the claim on file #.

Introduction

This hearing dealt with Applications for Dispute Resolution filed by the Landlord on July 25, 2014 and September 4, 2014. Both applications were filed seeking to obtain an Order of Possession for unpaid rent and or utilities and a \$5,000.00 Monetary Order for: for unpaid rent or utilities; to keep all or part of the security 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 hearing was conducted via teleconference and was attended by the Landlord and his Agent. The Agent submitted that the Tenant was served with copies of the Landlord's application for dispute resolution and Notice of dispute resolution hearing, on September 8, 2014, by registered mail. Canada Post receipts were provided in the Landlord's evidence. The Agent affirmed that the Canada Post website indicated that the package was successfully delivered on September 16, 2014. Based on the submissions of the Landlord I find the Tenant was served notice of this proceeding on September 16, 2014, in accordance with section 89 of the Act; and 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 evidence that the parties executed a written tenancy agreement for a one year fixed term tenancy that commenced on September 15, 2013, which was set to switch to a month to month tenancy after September 30, 2013 [sic]. The Tenant was required to pay rent of \$1,900.00 on the first of each month and on September 14, 2013 the Tenant paid a total of \$1,900.00 for the pet and security deposits (\$950.00 each).

The Landlord submitted that when the Tenant failed to pay the July 1, 2014 rent of \$1,900.00 he personally served the Tenant with a 10 Day Notice on July 6, 2014. The Tenant has not made any payments since and now has an accumulated balance owing for July, August and September 2014 rent. The Tenant remains in possession of the rental unit; therefore, they are seeking an Order of Possession and monetary order for the unpaid rent and use and occupancy.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord, his Agent, and corroborated by their evidence.

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 received the 10 Day Notice on July 6, 2014, and the effective date of the Notice is **July 16, 2014**, in accordance with section 46 of the Act.

The evidence supports that the Tenant did not pay the full amount owed within the required five day period; 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 \$1,900.00 that was due July 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 July 1, 2014, rent in the amount of **\$1,900.00**.

As noted above this tenancy ended **July 16, 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 August and September 2014.

The Tenant remains in possession of the rental unit and the Landlord will not regain possession until two days after service of the Order of Possession; therefore, I find the Landlord is entitled to payment for use and occupancy for the entire months of August and September 2014, in the amount of **\$3,800.00** (2 x \$1,900.00)

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 security deposit plus interest as follows:

Unpaid July 2014 Rent	\$1,900.00
Use and Occupancy (Aug &. Sept)	3,800.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$5,750.00
LESS: Pet Deposit \$950.00 + Interest 0.00	-950.00
LESS: Security Deposit \$950.00 + Interest 0.00	<u>-950.00</u>
Offset amount due to the Landlord	<u>\$3,850.00</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 in the amount of **\$3,850.00**. 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: September 29, 2014

Residential Tenancy Branch

