



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lighthouse Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, O

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- 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; and
- other remedies, described in the landlord's application for dispute resolution as authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 3:19 p.m. in order to enable her to connect with this teleconference hearing scheduled for 3:00 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he handed the tenant the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on February 18, 2013. The landlord testified that he sent the tenant a copy of the original application for dispute resolution in which he was seeking a monetary award of \$1,270.00 by registered mail on April 30, 2013. He provided the Canada Post Tracking Number to confirm this registered mailing. I am satisfied that the landlord served the above documents to the tenant in accordance with the *Act*.

The landlord entered into written evidence a copy of his amended application for dispute resolution in which he was seeking an increased monetary award of \$2,045.00.

Although he was certain that he served this amended application to the tenant, he said that he was not clear on how or when that occurred. As such, I have only considered the landlord's original application for dispute resolution, plus amounts that have subsequently become owing during this tenancy.

Issues(s) to be Decided

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? Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This periodic tenancy commenced on October 5, 2012. Monthly rent is set at \$750.00, payable in advance on the first of each month, plus heat and hydro. The landlord continues to hold the tenant's \$375.00 paid on October 5, 2012.

The landlord's 10 Day Notice identified \$1,220.00 in unpaid rent owing as of February 18, 2013, the date it was issued. He testified that this amount included unpaid February 2013 rent of \$750.00 that became due on February 1, 2013, and \$470.00 that was owing prior to February 1, 2013. The landlord confirmed that no subsequent 10 Day Notice has been issued to the tenant.

The landlord testified that since the 10 Day Notice was issued, the landlord has received direct shelter assistance payments of \$750.00 from the Ministry of Social Development (the Ministry) on April 20, 2013, May 9, 2013 and May 22, 2013. He said that no receipts have been issued to the tenant or the Ministry for these payments.

Analysis

The tenant failed to pay the amount identified as owing in the 10 Day Notice in full within five days of receiving that Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice, March 1, 2013. However, since then, the landlord has continued to receive and cash a series of rent cheques provided by the Ministry to look after the tenant's monthly rent. I find that the landlord's acceptance of three monthly rent cheques in the amount of \$750.00 each for this tenancy effectively reinstated this tenancy beyond the effective date identified in the 10 Day Notice. The landlord confirmed that he has not issued receipts to advise that the Ministry's payments were being accepted for use and occupancy only and not to reinstate this tenancy. By failing to provide any such notification, I find it reasonable that the tenant and the Ministry understood that this tenancy was continuing and was no longer subject to the 10 Day Notice issued in mid-February 2013. For these reasons, I advised the landlord at the hearing that I was dismissing the landlord's application to end this tenancy on the basis of the 10 Day Notice, which is no longer in effect.

I have also considered the landlord's application for a monetary Order for unpaid rent. Based on the landlord's undisputed oral and written evidence, I find that \$1,220.00 in unpaid rent, the amount identified in the 10 Day Notice, was owed for this tenancy as of

February 18, 2013. Since then, additional rent totalling \$2,250.00 has become owing for the months of March, April and May 2013. Rent that was due for this tenancy totals \$3,470.00 (\$1,220.00 + \$2,250.00 = \$3,470.00). Since February 18, 2013, the landlord has received three rent payments of \$750.00 each from the Ministry, totalling \$2,250.00. I find that as of the date of this hearing, \$1,220.00 was owed by the tenant to the landlord for unpaid rent during this tenancy. I issue a monetary Order to the landlord in the amount of \$1,270.00, which allows the landlord to recover this unpaid rent and the landlord's \$50.00 filing fee for this tenancy.

Since this tenancy continues, I have not allowed the landlord to recover a portion of the tenant's security deposit.

Conclusion

I dismiss without leave to reapply the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice issued on February 18, 2013. The landlord's 10 Day Notice is set aside and this tenancy continues.

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and the filing fee for this application.

Item	Amount
Rent Owing as of February 18, 2013	\$1,220.00
Rent Due as of March 1, 2013	750.00
Rent Due as of April 1, 2013	750.00
Less Payment of April 20, 2013	-750.00
Rent Due as of May 1, 2013	750.00
Less Payment of May 9, 2013	-750.00
Less Payment of May 22, 2013	-750.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,270.00

The landlord is provided with a formal copy of an Order of Possession. 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.

As this tenancy continues, I make no order with respect to the landlord's application to be granted authorization to retain the tenant's security deposit, which remains in place.

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 28, 2013

Residential Tenancy Branch

