



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1963 Investments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: CNC
For the landlord: OPR OPC MNR MNSD MNDC FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”). The tenant applied to cancel a Notice to End Tenancy for Cause. The landlord applied for an order of possession for unpaid rent or utilities and cause, for a monetary order for unpaid rent or utilities, for authorization 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 filing fee.

An agent for the landlord (the “agent”) and the owner of landlord company attended the hearing. The tenant did not attend the hearing. As the tenant did not attend the hearing, their application was **dismissed without leave to reapply** after the 10 minute waiting period had elapsed. The hearing continued with consideration of the landlord’s application.

Agent PV testified that he personally served the tenant with the landlord’s evidence package on September 12, 2013 at the rental unit at approximately noon. I find the tenant was sufficiently served in accordance with the *Act*.

Preliminary and Procedural Matter

The agent testified under oath that the tenant vacated the rental unit between noon and 2:00 p.m. on September 16, 2013 by returning the rental unit keys the day before the dispute resolution hearing. The agent requested an order of possession in case the tenant returns to the rental unit. The agent stated that the tenant has not provided a forwarding address since vacating the rental unit on September 16, 2013.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy agreement began on January 30, 2013 and reverted to a month to month tenancy after April 30, 2013. Monthly rent in the amount of \$600.00 was due on the first day of each month, however, the agent and the owner of the landlord company stated that they mutually agreed to reduce the tenant's rent to \$550.00 on or about May 2013 to "help out the tenant". A security deposit of \$250.00 was paid by the tenant at the start of the tenancy which the landlord continues to hold.

The agent stated that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated August 12, 2013 at approximately 11:00 a.m. on August 12, 2013 by posting the 10 Day Notice to the tenant's door. The amount owing on the 10 Day Notice is \$550.00 due August 1, 2013, and has an effective vacancy date of August 22, 2013. The agent stated that the tenant did not pay the amount owing or dispute the 10 Day Notice.

The agent stated that the tenant failed to pay \$550.00 in rent for August 2013, and also failed to pay \$550.00 in rent for September 2013. The landlord is also seeking the recovery of the filing fee.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of possession – The agent testified that the tenant failed to pay rent for August 2013 in the amount of \$550.00 and failed to pay \$550.00 for September 2013. The effective vacancy date on the 10 Day Notice is listed as August 22, 2013 which automatically corrects under the *Act* to August 25, 2013 as the 10 Day Notice was posted to the tenant's door on August 12, 2013, and the tenant is deemed to be served three days later pursuant to section 90 of the *Act*, on August 15, 2013. Although the

agent stated the tenant vacated the rental unit on September 16, 2013 by returning the rental unit keys the day before the hearing, the landlord is seeking an order of possession in case the tenant decides to return to the rental unit.

Section 26 of the *Act* requires that the tenant pay rent on the day that it is due in accordance with the tenancy agreement whether or not the landlord complies with the *Act*. The tenant did not apply to dispute the 10 Day Notice. Therefore, pursuant to section 46 of the *Act*, I find the tenant is conclusively presumed to have accepted that the tenancy ended on the corrected effective date of the notice, which in the matter before me was August 25, 2013. Given the above, I find that the landlord is entitled to an order of possession effective **two (2)** days after service on the tenant. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that court. I do not find it necessary to consider the landlord's request for an order of possession pursuant to a 1 Month Notice to End a Tenancy for Cause, as the landlord has been granted an order of possession based on an undisputed 10 Day Notice.

Claim for unpaid rent – Based on the undisputed testimony of the agent and the owner of the landlord company, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I accept the undisputed testimony of the agent and the owner of the landlord company that the tenant failed to pay \$550.00 rent for August 2013 and \$550.00 rent for September 2013, for a total amount of unpaid rent in the amount of \$1,100.00. Therefore, I find the landlord is entitled to compensation in the amount of \$1,100.00 in unpaid rent as described above.

As the landlord has succeeded with their application, I grant the landlord the recovery of the **\$50.00** filing fee.

The landlord continues to hold the tenant's security deposit of \$250.00 which has accrued \$0.00 in interest since the start of the tenancy.

Monetary Order – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit as follows:

August 2013 rent owing	\$550.00
September 2013 rent owing	\$550.00
Filing fee	\$50.00
Subtotal	\$1,150.00
<i>Less tenant's security deposit including \$0.00 in interest</i>	<i>-\$250.00</i>
TOTAL OWING BY TENANT TO THE LANDLORD	\$900.00

Conclusion

I dismiss the tenant's application in full without leave to reapply.

I grant the landlord an order of possession effective **two days** after service upon the tenant. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

I find that the landlord has established a total monetary claim of \$1,150.00 as indicated above. I authorize the landlord to retain the tenant's full security deposit of \$250.00 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$900.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 17, 2013

Residential Tenancy Branch

