



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NAI Goddard & Smith Realty Services Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

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 and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The male tenant (the tenant) confirmed that he was acting on behalf of both tenants. He confirmed that the landlord handed the tenants a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on August 14, 2013. The tenant confirmed that the landlord handed both tenants copies of the landlord's dispute resolution hearing package on August 20, 2013. I am satisfied that the landlord served the above documents and copies of the landlord's written evidence to the tenants in accordance with the *Act*.

Preliminary Matter- Tenant's Request for an Adjournment

At the commencement of the hearing, the tenant asked whether I had received a fax that he had sent earlier that day in which he was requesting an adjournment of this hearing. I advised that I had not received his fax, but that I could still consider his request for an adjournment. He explained that he had suffered a bad fall last week working on the rental unit for the landlord. He testified that he was now in bad physical condition, is basically bed-ridden and has suffered a concussion. He provided no explanation as to why the female tenant could not have participated in this teleconference hearing.

Analysis – Tenant's Request for an Adjournment

Rule 6 of the Residential Tenancy Branch (RTB) Rules of Procedure establishes how late requests for a rescheduling and adjournment of dispute resolution proceedings are handled. As outlined below, Rule 6.3 allows me to consider the reasons for requesting an adjournment, even after a hearing has commenced.

6.3 At any time after the dispute resolution proceeding commences, the arbitrator may adjourn the dispute resolution proceeding to a later time at the request of any party or on the arbitrator's own initiative...

Rule 6.4 requires that I take into account the following criteria in considering any request for an adjournment.

6.4 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

(a) the oral or written submissions of the parties;

(b) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose];

(c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;

(d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and

(e) the possible prejudice to each party...

In this case, the tenant did not submit written evidence before this hearing, while the landlord submitted undisputed oral and written evidence that the tenants have not paid anything towards this tenancy since this new fixed term tenancy agreement began on June 1, 2013. The tenant testified that both he and the female tenant received the landlord's 10 Day Notice and notice of this hearing well in advance of the hearing. Although the tenant claimed that he had a valid monetary claim against the landlord, the tenants have not made any application for a monetary award through the dispute resolution process. The landlord testified that the delay caused by the granting of an adjournment would lead to even higher monetary losses for the landlord as the tenants have not paid rent for the past four months and another month's rent was to become due the following day.

Under the circumstances and after considering the criteria in Rule 6.4, I denied the tenant's request for an adjournment. I did so as I found that there was reasonable grounds to believe that the landlord's interests would be prejudiced if the tenant's request were to be granted. I proceeded with the hearing of the landlord's application.

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 and losses arising out of this tenancy? Is the landlord entitled to a monetary award for damages arising out of this tenancy? Is the landlord entitled to retain all of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy began in May 2012 as a one-year fixed term tenancy. At the expiration of the initial term, the parties signed another one-year fixed term Residential Tenancy Agreement (the Agreement) that took effect on June 1, 2013. The Agreement is scheduled to end on May 31, 2014. Monthly rent has been set at \$1,600.00 for both fixed terms, payable in advance on the first of each month. The landlord continues to hold the tenants' \$800.00 security deposit paid on May 10, 2012.

The landlord entered into written evidence a number of 10 Day Notices issued to the tenants during their tenancy. The most recent 10 Day Notice called for an end to this tenancy by August 24, 2013.

The landlord's application for a monetary award of \$5,000.00 included the following items listed in the Details of the Dispute section of the landlord's application for dispute resolution:

Item	Amount
Unpaid June 2013 Rent	\$1,600.00
Unpaid July 2013 Rent	1,600.00
Unpaid August 2013 Rent	1,600.00
Request to Retain Security Deposit for Breach of Terms of Lease	800.00
Cost of Finding a Replacement Tenant	525.00
Credit Check Cost	94.50
Recovery of Filing Fee for this Application	50.00
Total of Above Items	\$6,269.50

At the hearing, the landlord gave undisputed sworn testimony that the tenants have not paid anything towards this tenancy since the landlord issued the 10 Day Notice. The landlord testified that the tenants have not paid their September 2013 rent. He requested recovery of the unpaid rent for September 2013.

The tenant confirmed that the tenants have not paid rent for the months claimed by the landlord. He said that the tenants had intended to submit their own claim for a monetary award stemming from events that transpired during the previous Agreement with the landlord. The tenant did not elaborate on this issue as the only application before me is that of the landlord. I advised the tenant that the tenants have considerable time left to file their own application for dispute resolution if that is their wish. I suggested that they obtain more information from the RTB with respect to the process they would need to follow if that were their intention.

Analysis

The tenants failed to pay the August 2013 rent in full within five days of receiving the 10 Day Notice. The tenants have 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 tenants' failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by August 24, 2013. As that has not occurred, I find that the landlord is entitled to a 5 day Order of Possession, the time frame requested by the landlord. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenants do not vacate the rental unit within the 5 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the undisputed evidence of the parties, I find that the tenants have not paid their rent since June 1, 2013. I find that the landlord is entitled to a monetary award of \$1,600.00 for each of June, July and August 2013, the months cited in the landlord's original application.

The landlord's application for the return of the tenants' security deposit is somewhat confusing as the landlord requested authorization to keep the \$800.00 security deposit **plus** obtain a \$525.00 fee for locating a new tenant and a \$94.50 credit check.

With respect to the request to retain the security deposit, the landlord can only obtain access to the tenants' security deposit in order to offset unpaid rent or other losses arising out of this tenancy. This is not a separate provision that allows the landlord to retain the security deposit without reducing the value of the security deposit from outstanding charges owed to the landlord by the tenants.

Although the landlord did not elaborate on this at the hearing, the Agreement does contain a clause similar to a liquidated damages clause whereby the parties agreed that the landlord could obtain a \$500.00 payment to re-lease the premises as well as obtain \$25.00 in reimbursements (plus taxes) for each credit check conducted. If I were to consider the landlord's request for the recovery of the \$500.00 payment plus estimated credit check costs that do not appear to have been incurred, I could only do so in the event that the Agreement was terminated. In that event, the landlord would not be able to obtain recovery of outstanding rent owed by the tenants for the remainder of this tenancy as the Agreement would then be of no continuing legal effect. In other words, I find that the Agreement allows the landlord to choose between a request to obtain the lease breaking fee and credit check fees as set out in Clause 3 of the Agreement or losses arising from unpaid rent for the remainder of the Agreement, but not both.

In this case, the landlord asked for reimbursement of losses that have arisen as a result of the tenants' failure to vacate the rental unit by the effective date noted on the landlord's 10 Day Notice. This request for an additional \$1,600.00 in losses incurred after the landlord's application for dispute resolution was submitted and after this tenancy ended on August 24, 2013 is far in excess of the amounts claimed under Clause 3 of the Agreement. As there is undisputed evidence that the landlord has suffered these additional losses due to the tenants' refusal to abide by the terms of the 10 Day Notice requiring them to vacate the rental unit by August 24, 2013, I allow the landlord a monetary award of \$1,600.00 for loss of rent for September 2013. For the reasons outlined above, I dismiss the landlord's claim for the "breach of the lease term" plus a credit check which the landlord provided no proof of having been conducted, without leave to reapply.

As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee paid by the landlord for the application. I order the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period.

In reaching this decision, I recognize that the monetary Order resulting from the landlord's additional request for reimbursement of losses for September 2013 exceeds the \$5,000.00 sought in the landlord's original application for a monetary award. I allow this increase in the monetary Order beyond \$5,000.00, as there is undisputed evidence that additional losses have occurred from this tenancy since the landlord applied for dispute resolution.

Conclusion

I grant an Order of Possession to the landlord effective **five days after service of this Order** on the tenant(s). 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.

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, loss of rent and the filing fee for this application, and to retain the tenants' security deposit:

Item	Amount
Unpaid June 2013 Rent	\$1,600.00
Unpaid July 2013 Rent	1,600.00
Unpaid August 2013 Rent	1,600.00
Loss of Rent for September 2013	1,600.00
Less Security Deposit	-800.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$5,650.00

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the remaining portions of the landlords' current application for dispute resolution without leave to reapply. This does not preclude the landlord from seeking a monetary award for possible loss of rent for October 2013, a loss which I could not consider in the context of this hearing because October rent was not due until the day after this hearing.

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: October 01, 2013

Residential Tenancy Branch

