



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Westhall Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: OPR MNR MNDC FF

For the tenant: CNR OLC RP RR O

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 landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The tenant applied to cancel a Notice to End Tenancy for Unpaid Rent or Utilities, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement and to make repairs to the unit, site or property, for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, and “other” although details of “other” are not clearly indicated in the tenant’s application.

Two agents for the landlord (the “agents”) attended the hearing. The hearing process was explained to the agents and an opportunity was given to ask questions about the hearing process. Thereafter the agents gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The tenant did not attend the hearing. The tenant was provided with a copy of the Notice of a Dispute Resolution Hearing after filing his application dated August 26, 2013. The tenant, however, did not attend the teleconference hearing set for today at 11:00 a.m. The phone line remained open for twenty-five minutes and was monitored throughout this time. Only the two agents for the landlord called into the teleconference hearing.

After a ten minute waiting period, **the application of the tenant was dismissed without leave to reapply.** The hearing continued with consideration of the landlord's application.

Agent QV stated that he served the tenant with the Notice of Hearing and evidence by registered mail on August 30, 2013. The agent stated that the tenant signed for and accepted the registered mail package on September 6, 2013, according to the online registered mail postal tracking website. Based on the above, I find that the tenant was sufficiently served under the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matter

Agent QV testified that the landlord was reducing their monetary claim by \$100.00 due to an error in their monetary claim calculation. As a result, agent QV requested that the landlord's original monetary claim of \$3,567.20 be reduced to \$3,467.20 for unpaid rent. As a request by the landlord's agent to reduce their monetary claim against the tenant does not prejudice the tenant, the landlord's monetary claim to be considered was reduced to \$3,467.20.

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?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on March 1, 2013 and was to revert to a month to month tenancy after February 28, 2014. Monthly rent in the amount \$900.00 was due on the first day of each month. Agent QV stated that the tenant failed to pay a security deposit at the start of the tenancy.

Agent QV testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated August 15, 2013 was served on the tenant by registered mail on August 15, 2013. Agent QV stated that the tenant signed for the registered mail

package on August 20, 2013, according to the online registered mail postal tracking website. The 10 Day Notice was submitted in evidence by the landlord. The effective vacancy date on the 10 Day Notice is August 25, 2013. Agent QV stated that the tenant continues to occupy the rental unit.

During the hearing, once the tenant's application to cancel the 10 Day Notice was dismissed without leave to reapply, the landlord verbally requested an order of possession.

The agent testified that the tenant owes the following in unpaid rent:

Unpaid portion of April 2013 rent	\$117.20
Unpaid portion of May 2013 rent	\$200.00
Unpaid portion of June 2013 rent	\$700.00
Unpaid portion of July 2013 rent	\$450.00
Unpaid portion of August 2013 rent	\$200.00
Unpaid September 2013 rent	\$900.00
Unpaid October 2013 rent	\$900.00
TOTAL	\$3,467.20

Analysis

Based on the documentary evidence and undisputed testimony of agent QV, and on the balance of probabilities, I find the following.

Order of possession - Section 55 of the *Act* states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director **must grant an order of possession** of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) **the landlord makes an oral request for an order of possession, and**

(b) **the director dismisses the tenant's application or upholds the landlord's notice.**

[emphasis added]

Given the above and taking into account the landlord's request for an order of possession during the hearing, **I find** that the landlord is entitled to an order of possession **effective two (2) days after service on the tenant**. The 10 Day Notice was served on August 20, 2013 by registered mail which is supported by the online postal tracking information submitted in evidence. I find the effective vacancy date automatically corrects under the *Act*, to August 30, 2013. The effective vacancy date of the 10 Day Notice has already passed and the tenant continues to occupy the rental unit. The order of possession must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

Monetary claim – The landlord has claimed a total of \$3,467.20 in unpaid rent which is described in detail above. Based on agent QV's undisputed testimony, **I find** the landlord has met the burden of proof in proving that the tenant owes a total of \$3,467.20 in unpaid rent as per the table above. Section 26 of the *Act* requires a tenant to pay rent on the day that it is due in accordance with the tenancy agreement. Therefore, **I find** the tenant breached section 26 of the *Act* by failing to pay rent in the amount of \$3,467.20 and is entitled to that amount as compensation under the *Act*.

As the landlord's claim had merit, **I grant** the landlord the recovery of their filing fee in the amount of **\$50.00**.

Based on the above, **I find** the landlord has established a total monetary claim in the amount of **\$3,517.20** comprised of \$3,467.20 in unpaid rent, plus the \$50.00 filing fee. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, in the amount of **\$3,517.20**. This order must be served on the tenant and may be enforced in the Provincial Court of British Columbia (Small Claims).

Conclusion

The landlord is granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord is granted a monetary order in the amount of \$3,517.20 comprised of \$3,467.20 in unpaid rent, plus the \$50.00 filing fee. This order must be served on the tenant and may be enforced in the Provincial Court of British Columbia (Small Claims).

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

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: October 04, 2013

Residential Tenancy Branch

