



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC

Introduction

This hearing was convened by way of conference call in response to an application by the landlord for an Order of Possession and a Monetary Order for: unpaid rent or utilities; for money owed or compensation for loss under the *Residential Tenancy Act* (referred to as the Act), regulation or tenancy agreement; and, to keep all or part of the pet damage or security deposit.

The landlord served the tenant with a copy of the application and Notice of Hearing documents by registered mail. The Canada Post tracking number was provided as evidence for this method of service. The Canada Post website indicates that the tenant received and signed for this on December 24, 2013. Based on this, I find the tenant was served the hearing documents as required by the Act.

The landlord's agent attended the hearing to give affirmed testimony and also provided evidence in advance of the hearing. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the Act. All of the landlord's testimony and documentary evidence submitted was considered in this decision.

At the start of the hearing the landlord requested to amend her application to recover the filing fee for the cost of making the application from the tenant. The file before me contained a receipt for the \$50.00 filing fee paid by the landlord to make this application. As a result, I amend the landlord's application to include the recovery of the filing fee pursuant to section 64(3) (c) of the Act.

The landlord withdrew her portion of the monetary claim relating to money owed or compensation for damage or loss under the Act for January, 2014 unpaid rent and to keep the tenant's security deposit as she intends to deal with these issues at the end of the tenancy. As a result, I dismiss these portions of the landlord's application with leave to re-apply.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order for outstanding rent relating November and December, 2013 and a late fee for November, 2013?

Background and Evidence

The landlord's agent testified that this month to month tenancy began on March 1, 2008. A written tenancy agreement, provided as evidence for the hearing, was completed and rent was initially established at \$835.00 at the start of the tenancy. Currently, rent in the amount of \$975.00 is payable by the tenant on the first day of each month.

The landlord's agent testified that the tenant's cheque for the month of November, 2013 was returned as unpaid. The landlord's agent then testified that the tenant failed to pay full rent for December, 2013. As a result, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on December 5, 2013 by positing it to the tenant's door. The notice was provided as evidence for the hearing. The notice shows an amount of \$1,975 relating to November and December, 2013 unpaid rent and a \$25.00 late fee due on December 1, 2013 with an expected date of vacancy of December 15, 2013. The landlord's agent noted that the tenancy agreement signed by the landlord and tenant sets out in clause 3(6) that the tenant will be charged a \$25.00 administration fee for a returned cheque that is not honored by the bank.

Analysis

In the absence of any testimony or documentary evidence from the tenant, I make the following determination.

Section 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a tenant must pay the overdue rent or apply for dispute resolution; if the tenant fails to do either, then they are conclusively presumed to have accepted the notice to end tenancy and they must vacate the rental unit on the date to which the notice relates.

Having examined the notice to end tenancy, I find that the contents complied with the requirements of the Act. As a result, I accept that the tenant was served by the landlord with the notice to end tenancy on December 5, 2013. The Act states that a document posted on the door is deemed to have been received 3 days later. Therefore I find that

the tenant received the notice to end tenancy on December 8, 2013 and the effective vacancy date of the notice is automatically corrected to December 18, 2013 pursuant to section 53 of the Act.

As a result, the tenant had until December 13, 2013 to pay the overdue rent or apply to dispute the notice, neither of which the tenant did. As a result, I find that the tenant is conclusively presumed to have accepted that the tenancy ended as per the notice, and therefore the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$1,950.00 for November and December, 2013 unpaid rent.

Section 7(d) of the *Residential Tenancy Regulation* allows a landlord to charge a fee of no more than \$25.00 for the return of a tenant's cheque by a financial institution which is documented in a tenancy agreement. The tenancy agreement provided by the landlord as evidence, indicates that the tenant will be charged \$25.00 for returned cheques. Therefore, I find that the landlord is entitled to this fee in the amount of \$25.00.

I also find that the landlord is entitled to recover from the tenant the \$50.00 filing fee for the cost of this application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the tenant to the landlord is \$2,025.00.

Conclusion

For the reasons set out above, I grant the landlord an Order of Possession effective **2 days after service on the tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court.

I also grant the landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$2,025.00**. This order must be served on the tenant and may then be filed in the Provincial Court (Small Claims) 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: January 09, 2014

Residential Tenancy Branch

