



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, MNDC, MNR, MNSD, OPR

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;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although the hearing lasted approximately 15 minutes in length. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony and to make submissions.

The landlord gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent, dated August 5, 2014 ("10 Day Notice"), was posted to the door where the tenant was residing, on August 5, 2014 at 12:00 p.m. The landlord has attached a proof of service with a witness signature, in her application. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on August 8, 2014, the third day after its posting.

The landlord testified that she served the tenant with the Application for Dispute Resolution hearing package ("Application") on August 27, 2014 via registered mail. She provided Canada Post receipts and tracking numbers as proof of service, with her application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was

deemed served with the Application on September 1, 2014, the fifth day after its registered mailing.

Issue(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 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 from the tenant?

Background and Evidence

In her Application, the landlord provided a copy of the tenancy agreement, which is for a fixed term of one year, beginning on April 1, 2014 and ending on March 31, 2015. Rent is payable monthly in the amount of \$785.00 on the first day of each month. Schedule A, an addendum to the tenancy agreement provided a rental discount in the amount of \$100.00 for each month, thereby reducing the rent to \$685.00 per month. The tenancy agreement and Schedule A were signed by both the tenant and landlord on March 22, 2014.

The landlord posted a 10 Day Notice on August 5, 2014. She has applied for an Order of Possession for non-payment of full rent for the months of August, September and October 2014. The landlord testified that the unpaid rent at the time of the 10 Day Notice in August 2014 was \$685.00, as indicated on the Notice. The landlord amended her Application at the Hearing, seeking the amount of \$685.00 for each of the three months of August, September and October 2014, despite having asked for \$785.00 for each of the three months in her original Application.

The landlord testified that the tenant continues to reside in the unit in question. She testified that the tenant made a payment of \$300.00 on August 8, 2014 and a further payment of \$400.00 on August 23, 2014, to the landlord. The landlord confirmed that receipts were issued for the above payments and served personally to the tenant, indicating that it was for "use and occupancy only" on both receipts. The landlord confirmed that no further payments have been made by the tenant, to date.

The landlord is seeking to retain all or a portion of the tenant's security deposit of \$350.00, which she continues to hold.

The landlord is also seeking to recover the filing fee of \$50.00 for her application from the tenant.

Analysis

The tenant failed to pay the full rent for August 2014 within five days of being deemed to have received the 10 Day Notice. Although a partial payment of \$300.00 was made on August 8, 2014, no further payments were made by August 13, 2014, which was the fifth day deadline after the tenant was deemed to have received the 10 Day Notice. Further, the partial payments made in August 2014 were accepted for “use and occupancy only,” which did not reinstate the tenancy. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on August 18, 2014, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by August 18, 2014. As this has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

The full monthly rent of \$685.00 for August, September and October 2014, totals \$2,055.00. I have accounted for the partial payments made by the tenant to the landlord in August 2014, totalling \$700.00. Therefore, I find that the landlord is entitled to rental arrears outstanding in the amount of \$1,355.00 against the tenant.

The landlord testified that she continues to hold the tenant’s security deposit of \$350.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant’s security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant or anyone on the premises 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 in the amount of \$1,055.00 against the tenant as follows:

August 2014 Rent	\$685.00
September 2014 Rent	685.00
October 2014 Rent	685.00
Less Partial Payment on August 8, 2014	-300.00
Less Partial Payment on August 23, 2014	-400.00
Less Security Deposit	-350.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$1,055.00

The landlord is provided with a monetary order in the amount of \$1,055.00 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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.

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 21, 2014

Residential Tenancy Branch