



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MND MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on August 19, 2014, to obtain an Order of Possession for unpaid rent and a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities; to keep all or part of the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord. The Landlord submitted testimony that the Tenant was served with copies of the Landlord's application for dispute resolution and Notice of dispute resolution hearing, on August 22, 2014, by registered mail. Canada Post receipts were provided in the Landlord's testimony. Based on the submissions of the Landlord I find the Tenant was deemed served notice of this proceeding on August 27, 2014, in accordance with section 90 of the Act; and I proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to an Order of Possession?
2. Has the Landlord proven entitlement to a Monetary Order?

Background and Evidence

The Landlord submitted evidence that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on August 15, 2012 and switched to a month to month tenancy after August 31, 2013. The Tenant was initially required to pay rent of \$830.00 plus \$25.00 for parking. Rent was subsequently increased to \$880.00 (\$855.00 + \$25.00 parking) and a second increase came into effect on September 1, 2014 raising the rent total rent to \$898.81 (\$873.81 plus \$25.00 parking).

The Landlord testified that when the Tenant failed to pay their July 2014 rent a 10 Day Notice was posted to their door on July 7, 2014, seeking payment of \$880.00 that was due July 1, 2014. The Tenants vacated the unit on February 3, 2014, without paying the past due rent or late fees.

The Landlord submitted evidence that one payment was received from the Tenant on August 22, 2014, in the amount of \$1,600.00 and a receipt was issued for "use and occupancy only". He argued that the Tenant had signed up for automatic payments and since July her payments have been returned NSF. The Landlord was also seeking to recover \$25.00 NSF charges as provided for in the tenancy agreement.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accepted the undisputed version of events as discussed by the Landlord and corroborated by their evidence.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on July 10, 2014, three days after it was posted to the door, and the effective date of the Notice was **July 20, 2014**. The Tenant did not pay the rent in full within the required five day period; rather, she waited until another month of unpaid rent and on August 22, 2014 made a partial payment of \$1,600.00 which was received for use and occupancy only.

Based on the above, I find the Tenant was conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **July 20, 2014**, and was required to vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I award the Landlord an Order of Possession.

The Landlord claimed unpaid rent of \$880.00 that was due July 1, 2014, in accordance with section 26 of the *Act* which stipulates a tenant must pay rent in accordance with the tenancy agreement. Based on the aforementioned, I find the Landlord has met the burden of proof and I award them unpaid rent for July 2014 in the amount of **\$880.00**.

As noted above this tenancy ended **July 20, 2014**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for loss of rent and/or use and occupancy of the unit, not rent, for August, September, and October 2014.

The Tenant continues to occupy the rental unit so the Landlord will not regain possession until after they receive and serve the Order of Possession. Then the Landlord will have to ready the unit and find new tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire three month period of August 1 to October 31, 2014 in the amount of **\$2,627.62**.

The tenancy agreement provides for \$25.00 NSF fees in accordance with # 7 of the *Residential Tenancy Regulation*. The evidence supports the July 1, 2014 automatic withdrawal rent payment was not honored. Therefore I find the Landlord has proven the test for loss and I approve their claim for July 2014 NSF fees in the amount of **\$25.00**.

As noted above, this tenancy ended July 20, 2014, in accordance with the 10 Day Notice. Provisions such as NSF fees provided in the tenancy agreement are no longer in affect once a tenancy has ended. In this case the Landlord ought to have verified with the Tenant prior to putting through an automatic withdrawal payment after the eviction notice had been issued. Therefore, I find the Landlord is not entitled to claim NSF fees for automatic withdrawals that occurred after the tenancy ended in accordance with the 10 Day Notice. Accordingly, the claim for NSF fees for August, September and October are dismissed, without leave to reapply.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

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

| | |
|--|--------------------------|
| Unpaid July 2014 Rent | \$ 880.00 |
| NSF fee for July 2014 | 25.00 |
| Use & Occupancy /Loss of Rent | 2,627.62 |
| Filing Fee | <u>50.00</u> |
| SUBTOTAL | \$3,582.62 |
| LESS: Tenant payment August 22, 2014 | -1,600.00 |
| LESS: Pet Deposit \$415.00 + Interest 0.00 | -415.00 |
| LESS: Security Deposit \$415.00 + Interest 0.00 | <u>-415.00</u> |
| Offset amount due to the Landlord | <u>\$1,152.62</u> |

Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order in the amount of **\$1,152.62**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court 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: October 16, 2014

Residential Tenancy Branch

