



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT PARTNERSHIP LIMITED
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 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.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed the landlord's sworn oral testimony that she received the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on her door on August 1, 2014. 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 4, 2014, the third day after its posting.

The tenant also confirmed that she received a copy of the landlord's dispute resolution hearing package, including the application for dispute resolution, sent by the landlord by registered mail on August 27, 2014. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the dispute resolution hearing package on September 1, 2014, the fifth day after its mailing. The tenant also confirmed that she received copies of the landlord's written evidence, which I also find was served in accordance with the *Act*.

At the commencement of the hearing, the landlord reduced the amount of the requested monetary award from \$3,585.00 to \$2,247.00, the amount he claimed was outstanding

at the time of the hearing. I have amended the landlord's application for a monetary award accordingly.

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 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

This tenancy began as a one-year fixed term tenancy on September 1, 2003. After the expiration of the initial term, the tenancy continued as a periodic tenancy. As of January 1, 2014, monthly rent had increased to \$738.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$280.00 security deposit paid on August 11, 2003.

The landlord's initial application for a monetary award of \$3,585.00 included requests for the following:

Item	Amount
Unpaid July 2014 Rent and NSF Fee (\$738.00 + \$25.00 = \$763.00)	\$763.00
Unpaid August 2014 Rent (\$738.00 - \$130.00 = \$608.00)	608.00
Loss of Rent September 2014	738.00
Loss of Rent October 2014	738.00
Loss of Rent November 2014	738.00
Total of Above Items	\$3,585.00

At the hearing, the landlord gave undisputed sworn testimony that the landlord received payments from the tenant for use and occupancy only in the amounts of \$30.00 on August 5, 2014, \$100.00 on August 18, 2014, \$100.00 on September 18, 2014, \$100.00 on October 1, 2014, and \$400.00 on October 15, 2014. She gave undisputed sworn testimony that the current amount owing after the above payments is \$2,247.00 plus the \$50.00 filing fee for this application.

The tenant did not dispute the landlord's evidence with respect to the above payments and the amounts still owing from this tenancy. The tenant testified that she has been attempting to pay the amounts owing when she has been able to secure contract work.

She testified that she remains optimistic that she will be able to continue receiving contract work so that she can pay the amount owing in this tenancy. She testified that she appreciated how understanding the landlord had been with respect to the amounts owing and asked for more time so that she could continue her tenancy.

Analysis

Although the landlord has accepted a number of payments from the tenant since the 10 Day Notice was to have taken effect on August 18, 2014, there is undisputed testimony that each of these payments was accepted for use and occupancy only. Under these circumstances, I find that the landlord has not reinstated this tenancy after the effective date of the 10 Day Notice. The tenant failed to pay the \$738.00 in rent identified as owing in the 10 Day Notice in full within five days of being deemed to have received that Notice. The tenant has not made 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 tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by August 18, 2014. As that has not occurred, I find that the landlord is entitled to an Order of Possession to take effect by 1:00 p.m. on October 31, 2014. This date was selected as this has been a long-term tenancy and the landlord confirmed that it will no doubt take some time for the tenant to vacate the premises. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by 1:00 p.m. on October 31, 2014, the landlord may enforce this Order in the Supreme Court of British Columbia.

I find that there is undisputed sworn testimony and written evidence that the landlord is entitled to obtain a monetary award for the amount of outstanding rent currently owing. This amount includes \$763.00 for unpaid rent and the NSF fee from July 2014, a total of \$608.00 from August 2014, a total of \$638.00 from September 2014, and a total of \$238.00 from October 2014.

I also allow the landlord to retain the tenant's security deposit plus applicable interest. As the landlord has been successful in this application, I allow the landlord to recover the filing fee from the tenant.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective at 1:00 p.m. on October 31, 2014. Should the tenant 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 and the filing fee, and to retain the tenant's security deposit:

Item	Amount
July 2014 Rent and NSF Fee (\$738.00 + \$25.00 = \$763.00)	\$763.00
August 2014 Rent (\$738.00 - \$130.00 = \$608.00)	608.00
Rent Due September 1, 2014	738.00
Less September 18, 2014 Payment	-100.00
Rent Due October 1, 2014	738.00
Less October 1 and 15, 2014 Payments (\$100.00 + \$400.00 = \$500.00)	-500.00
Less Security Deposit plus Interest (\$280.00 + \$9.92 = \$289.92)	-289.92
Filing Fee	50.00
Total Monetary Order	\$2,007.08

The landlord is provided with these Orders 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 23, 2014

Residential Tenancy Branch

