



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VIEWPOINT DEVELOPMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, 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, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants ("tenant WF" and "tenant JWJ") did not attend the hearing although it lasted approximately 36 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that he is the owner of the landlord company named in the application and that he was appearing as agent on behalf of the landlord company at this hearing.

The landlord testified that he served both tenants separately with his application for dispute resolution hearing package ("Application") on December 31, 2014, by way of registered mail. He provided two Canada Post tracking numbers orally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's Application on January 5, 2015, the fifth day after its registered mailing.

The landlord testified that he received the tenants' written evidence for this hearing, on January 13, 2015.

Preliminary Matters

A previous hearing before a different arbitrator, for these parties at this rental unit, was held on January 16, 2015, the file number of which appears on the front page of this decision. The previous decision dismissed the tenants' application to cancel the landlord's "10 Day Notice," dated December 8, 2014, which is the subject of this application. The previous decision declared that this tenancy ended on December 22, 2014, the effective date on the 10 Day Notice, as the tenants acknowledged receipt of the 10 Day Notice on December 12, 2014. The previous decision held that the tenants did not have the right to deduct rent owed to the landlord, due to a labour dispute with the landlord. The previous hearing decision did not deal with the monetary aspect of the landlord's rent claims nor any request by the landlord for an Order of Possession. The previous hearing dealt solely with the tenants' application to cancel the 10 Day Notice. The landlord testified that both parties were present at the previous hearing and that both parties were orally advised of the arbitrator's decision during that hearing.

The landlord testified that he wished to amend his application to correct the name of "tenant WJJ" to "tenant JWJ." The landlord indicated that he inadvertently reversed the first and middle names of the tenant in the incorrect order. I do not find any prejudice to the tenants in granting this amendment. I find that both tenants had notice of this hearing and the orders sought against both of them, as they were served with the landlord's Application prior to the last hearing and they submitted their own written evidence package for this hearing. I also find that as both tenants were present at the previous hearing where they were orally advised of the arbitrator's decision, they had notice that the tenancy ended and that they owed rent to the landlord. In accordance with section 64(3)(c) of the *Act*, I amend the landlord's application to correct the name of tenant JWJ, which is now correctly reflected on the front page of this decision.

Issues 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?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord testified that this month to month tenancy began on May 15, 2013. Monthly rent in the amount of \$700.00 is payable on the first day of each month. A

security deposit of \$350.00 was paid by the tenants on May 15, 2013, and the landlord still retains this deposit. A written tenancy agreement was provided with the landlord's Application.

The landlord testified that his manager called him on January 20, 2015 and advised him that the tenants may have vacated the rental unit, as the manager noticed a moving van and moving boxes. The landlord indicated that he had not yet checked the rental unit to see whether the tenants had vacated, as he lives at a far distance from the rental unit address. The landlord stated that he is unsure as to whether the tenants are still in the rental unit and that he required an order of possession against both tenants for this reason.

The landlord is seeking \$1,388.00 in unpaid rent from the tenants, which is indicated on a monetary worksheet submitted with his Application. The landlord also sought to amend his monetary claim at the hearing, to add \$700.00 in unpaid rent for January 2015.

The 10 Day Notice indicated that \$1,388.00 unpaid rent was due on December 1, 2014. The 10 Day Notice explained that \$688.00 was due up to November 2014 and that a further \$700.00 was due for December 2014 rent, totaling \$1,388.00. The landlord testified that no rent payments have been made by the tenants since the 10 Day Notice was served upon them.

The landlord testified that tenant WF was his employee from approximately July 7 or 9, 2014 until November 17, 2014. The landlord indicated that he agreed to pay tenant WF for her employment starting on July 1, 2014, even though she had not yet begun her employment. He stated that tenant WF was the caretaker for this rental unit building. The landlord paid tenant WF \$550.00 per month for her employment, which he said was deducted from the tenants' monthly rental amount of \$700.00, which left a balance of \$150.00 in rent owed for each month of employment.

The landlord testified that as per his monetary worksheet, the tenants owed \$150.00 for each of July and August 2014 rent. The tenants paid \$300.00 on August 8, 2014, which was applied to the rental amounts above. The landlord indicated that the tenants have not made any further payments towards rent since August 8, 2014.

The landlord indicated that the tenants still owe \$150.00 in rent for each of September and October 2014. The landlord testified that the tenants owe \$388.00 for November 2014 rent, because he only paid the tenant WF \$312.00, not \$550.00, in employment wages for this month, a prorated amount since he terminated her employment on

November 17, 2014. The landlord testified that the tenants owe full rent of \$700.00 for December 2014 because the tenant WF was no longer working for the landlord at this time and no wages could be deducted from her rent. The landlord's monetary worksheet indicated all of the above amounts owed for this tenancy.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend the hearing. As per the previous hearing decision made by a different arbitrator on January 16, 2015, the landlord's 10 Day Notice was upheld, the tenants' application to cancel the notice was dismissed, and this tenancy ended on December 22, 2014. Accordingly, as per section 55 of the *Act*, the landlord has requested and is entitled to an order of possession against the tenants. As the tenants did not vacate the rental unit on December 22, 2014, as required, and since there is no conclusive evidence that the tenants have vacated the rental unit at this time, the landlord is entitled to a 2 day Order of Possession against both tenants.

The landlord provided undisputed evidence that the tenants owe \$1,388.00 for rent from September to December 2014. The tenants have not made any payments towards this rent amount. The tenants had notice of this amount owed, by way of the 10 Day Notice and the landlord's monetary worksheet submitted with his Application. Accordingly, I find that the landlord is entitled to \$1,388.00 in rental arrears from both tenants.

In his Application, which was dated and filed on December 29, 2014, the landlord did not apply for a monetary loss of \$700.00 for January 2015 rent. The landlord simply applied for \$1,388.00 total for September to December 2014 rent. As the tenants did not have notice of this additional \$700.00 amount sought by the landlord, since he requested it orally during the hearing and the tenants did not attend the hearing, I deny the landlord's request to amend his application to seek this amount. The landlord is entitled to make a new application to recover January 2015 rent. However, he must serve the tenants with his new application in accordance with the *Act*, which requires any registered mailings to occur at the address at which the tenants reside. The landlord is also cautioned to consider section 7(2) of the *Act*, with respect to mitigation of loss.

The landlord testified that he continues to hold the tenants' security deposit of \$350.00. Although the landlord did not apply to retain this security deposit, I find that, in accordance with the offsetting provisions under section 72 of the *Act*, the landlord is entitled to retain this security deposit in partial satisfaction of the monetary award.

As the landlord was successful in his Application, he is entitled to recover the \$50.00 filing fee from the tenants.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. Should the tenants 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 \$1,088.00 against the tenants as follows:

Item	Amount
September 2014 Rent	\$150.00
October 2014 Rent	150.00
November 2014 Rent	388.00
December 2014 Rent	700.00
Less Security Deposit	-350.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$1,088.00

The landlord is provided with a monetary order in the amount of \$1,088.00 in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: January 30, 2015

Residential Tenancy Branch

