



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HUDSON MEWS HOLDING LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, 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;
- 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 I waited until 11:15 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord's representative ("the landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was served to the tenant on January 12, 2015 by posting the notice on the rental unit door. The landlord provided a witnessed proof of service document with respect to this posting. The landlord gave sworn testimony that she served the tenant with the Application for Dispute Resolution hearing package on January 20, 2015 by sending it registered mail. The landlord provided a receipt and tracking number with respect to this mailing. I accept that the tenant was deemed served with the 10 Day Notice on January 15, 2015 (3 days after its posting) and the Application for Dispute Resolution hearing package on January 25, 2015 (5 days after its mailing).

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 and associated fees?

Is the landlord entitled to retain all or a portion of the tenant's security deposit towards any monetary award?

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

Background and Evidence

The landlord gave evidence that the rental agreement for the premises began on June 15, 2014 on a fixed term basis. The rental amount for this unit was established at \$1375.00 payable on the first of each month. The landlord testified that she continued to hold the \$687.50 security deposit that the tenant paid on May 22, 2014. The landlord testified that the tenant continues to reside in the rental unit.

The landlord has applied for an Order of Possession for unpaid rent for the month of January 2015. The landlord testified that the tenant did not pay rent of \$1375.00 due on January 1, 2015. The landlord testified that the tenant has been late with rent on previous occasions and warning letters have been sent to the tenant with respect to the late payment of rent. Particularly, her rent was not paid in full and on time in August 2014, December 2014 and January 2015.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did not pay the January rent after receiving the 10 Day Notice on January 15, 2015. The landlord applied for an Order of Possession on the basis of this unpaid rental amount.

The landlord testified that the tenant attended to the property manager's office at the residential premises on February 16, 2015 (the day before this hearing) and paid \$2900.00 to the landlord. This amount reflected the outstanding rent at \$1375.00 for both January and February 2015 as well \$150.00 in parking fees for both January and February 2015 (\$75.00 each month). The landlord testified that a receipt was issued indicating, "for use and occupancy only". The landlord testified that the tenant was advised that the landlord intended to proceed at hearing. The landlord also testified that the tenant was encouraged to attend the hearing to resolve the issues with this tenancy.

The landlord sought a monetary award of \$75.00 for late charges for August 2014, December 2014 and January 2015 (\$25.00 each month). The landlord also sought \$30.00 in outstanding rent with respect to January 2015 but was unable to articulate and particularize how this amount remained outstanding after the tenant's payment on February 16, 2015. The landlord also sought recovery of their filing fee for this application.

Analysis

While the tenant paid rental arrears on February 16, 2015, the tenant is required to pay the rent in accordance with the rental agreement and the *Residential Tenancy Act*. Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.” It is a landlord’s obligation to ensure that a tenant is aware any payment of rent accepted by the landlord will not necessarily reinstate a tenancy. I accept the landlord’s sworn testimony, supported by documentary evidence, that the tenant was advised that the tenancy was not reinstated as a result of her payment.

The tenant did not pay the January 2015 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice nor did the tenant attend this hearing. In accordance with section 46(5) of the *Act*, the tenant’s failure to either pay the outstanding rent or apply for dispute resolution within five days led to the end of his tenancy on the effective date of the notice. The tenant currently has no right under the *Act* to deduct all or a portion of the rent. In this case, the tenant was required to vacate the premises by January 25, 2015, the corrected effective date of the 10 Day Notice. As that has not occurred, I find that the landlord is entitled an Order of Possession.

The landlord testified that there are no longer any outstanding rental arrears however the landlord seeks compensation for late rent fees in August 2014, December 2014 and January 2015. The landlord pointed to paragraph 11 of the tenancy agreement that notifies the tenant of \$25.00 fees for each late or “nsf” payment of rent. All of the evidence provided by the landlord, in documentary form and testimony, indicates that the tenant was late with rent in August 2014, December 2014 and January 2015. The landlord has acknowledged payment of rent but provides sworn, undisputed testimony that the fees remain outstanding.

Section 7 of the *Residential Tenancy Act Regulations* allows a landlord to charge non-refundable fees including an administration fee of not more than \$25.00 for a late payment of rent or a returned cheque as long as that fee is provided for in the tenancy agreement. Term 11 of this residential tenancy agreement provides for late payment of rent or non-sufficient funds. Given that the late payment fee is clearly outlined in the tenancy agreement, I find that the landlord is entitled to a \$25.00 late fee for the each of the months August 2014, December 2014 and January 2015.

I do not find the landlord has provided evidence, to a balance of probabilities, that the tenant owes an amount of \$30.00 with respect to outstanding rent.

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

The landlord testified that she continues to hold a security deposit of \$687.50. I will allow the landlord to reduce the amount of the security deposit held for the tenant in satisfaction of the monetary award. The landlord is entitled to a monetary award as follows;

Item	Amount
Late Fees for August and December 2014 and January 2015 (\$25 x 3)	\$75.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Award	\$125.00

Conclusion

I will allow the landlord to reduce the amount of the security deposit held for the tenant in satisfaction of the monetary award. The security deposit shall be reduced from \$687.50 to \$562.50.

I find that the landlord is entitled an Order of Possession. I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

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: February 27, 2015

Residential Tenancy Branch

