



Dispute Resolution Services

Page: 1

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 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 tenants' 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 tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 9:45 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlord withdrew the application for an Order of Possession, testifying that Tenant RH had vacated the rental unit, leaving it vacant as of February 1, 2015. The landlord also withdrew her entire application with respect to Tenant JC, electing only to proceed against Tenant RH. The landlord testified that Tenant JC was taken off the rental agreement on August 31, 2009.

Preliminary Issue: Service of Documents

The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was served to Tenant RH by posting it on the rental unit door on January 7, 2015. The landlord gave sworn testimony that she served Tenant RH with the Application for Dispute Resolution hearing package by registered mail on January 29, 2015. The landlord provided receipts and tracking numbers with respect to this mailing. I accept that Tenant RH was deemed served with the 10 Day Notice on

January 10, 2015 (3 days after its posting) and the Application for Dispute Resolution hearing package on February 3, 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?

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 testified that this month to month tenancy began January 11, 2006. The current rental amount of \$770.92 is payable on the first of each month. The landlord testified that Tenant JC moved out of the unit on August 31, 2015 and that Tenant RH vacated the unit on February 1, 2015. The landlord testified that she continues to hold a \$325.00 security deposit paid by the tenants on January 11, 2006. The landlord seeks to retain that deposit towards any monetary award.

The landlord originally applied for an Order of Possession for unpaid rent for the month of January 2015. The landlord testified that Tenant RH did not pay rent of \$770.92 due on January 1, 2015. The landlord testified that there has been a lengthy history of late payment of rent and rent payments returned for insufficient funds by Tenant RH.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the Tenant RH did not pay the January rent after receiving the 10 Day Notice on January 10, 2015. The landlord testified that, after applying for an Order of Possession and monetary order for unpaid rent, she found the keys to the rental unit in her office on February 1, 2015. Her sworn undisputed testimony is that she received no notice from Tenant RH that he was ending his tenancy.

The landlord is also seeking a monetary award of \$1541.84 for the months of January 2015 and February 2015 as well as \$50.00 in late charges for those two months. The landlord pointed to the provision within the tenancy agreement that notified the tenants of \$25.00 late and "nsf" fees as a part of that agreement.

The landlord testified that, when Tenant RH moved out and left the keys behind, she inspected the rental unit. Her undisputed testimony was that the rental unit required significant cleaning that has now been done. She testified that, while she is in a position

to re-rent, it is difficult to re-rent in the middle of the month and she will not likely be able to rent the unit to new tenants until March 1, 2015. This is the basis for her application for February 2015 rent.

Analysis

Tenant RH failed to pay the January rent within five days of receiving the 10 Day Notice to End Tenancy. Tenant RH has not made an application pursuant to section 46(4) of the *Act* within five days of receiving 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 his tenancy on the effective date of the notice. In this case, this required the Tenant RH to vacate the premises by January 20, 2015. The landlord testified that Tenant RH remained in the rental unit until February 1, 2015. I find the landlord is entitled to a monetary order that includes an amount for unpaid rent in January 2015.

With respect to February rent, there is an issue with respect to the manner in which the Tenant RH ended the tenancy. Under Section 45 of the *Act*, a tenant may end a tenancy by giving the landlord notice on a date that is not earlier than one month after the date the landlord receives the notice and the day before the day in the month when rent is normally payable. It is the undisputed testimony of the landlord is that Tenant RH provided no notice at all; the landlord was not notified one month in advance of the end of the tenancy and the landlord was not notified on a date before rent is normally payable. In fact, the landlord only received the "message" that Tenant RH had left by finding the keys in his mail-slot, with no note or forwarding address, according to his testimony. Given this evidence, I find the landlord is entitled to a monetary order that includes an amount for rent in February 2015.

The landlord also applied for \$50.00 fees for late payment of rent for January 2015 and February 2015. The landlord provided copies of the written tenancy agreement which established this late payment fee. With respect to late fees, there is sufficient evidence to show that rent was late in January 2015. Based on this evidence, I find the landlord is entitled to \$25.00 in late payment for January 2015.

The monetary order for the month of February 2015 is based on the landlord's sworn testimony that she will be unable to rent the premises for that month. The \$690.00 amount included in the monetary order for February 2015 is to reflect the lack of notice that the landlord has to make alternate rental arrangements for these premises in February 2015. I do not believe that it would be appropriate to add a late payment fee to this monetary order for February 2015. For that reason, I do not find that the landlord is entitled to receive a \$25.00.00 late fee for the month of February 2015.

The landlord testified that she continues to hold a security deposit of \$325.00 plus any interest from January 11, 2006 to the date of this decision for this tenancy. I will allow the landlord to retain the security deposit plus \$17.62 interest in partial satisfaction of the monetary award.

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

The landlord withdrew her application for an Order of Possession. The landlord withdrew her application in its entirety with respect to Tenant JC. These applications are therefore withdrawn.

I issue a monetary Order in favour of the landlords as follows:

Rental Arrears for January 2015	\$690.00
Rental Loss for February 2015	690.00
Late Payment Fee for January 2015	25.00
Less Security Deposit and Interest (\$325.00 plus \$ \$17.62 interest)	-342.62
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$1112.38

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial 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 19, 2015

Residential Tenancy Branch

