



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 353178 B.C. 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 the hearing although it lasted approximately 32 minutes. The landlord's agent, SB ("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 property manager for the landlord company named in this application and that he had authority to appear as its agent at this hearing.

The landlord testified that he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, dated February 2, 2015 ("10 Day Notice"), by way of posting it to the tenants' rental unit door on the same date. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on February 5, 2015, three days after its posting.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on February 12, 2015, by way of registered mail. He provided a Canada Post receipt and tracking number as proof of service with the landlord's Application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Application on February 17, 2015, the fifth day after its registered 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 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

The landlord testified that this month to month tenancy began on November 15, 2013. Monthly rent in the current amount of \$664.00 is payable on the first day of each month. The landlord stated that under the tenancy agreement, rent of \$650.00 was payable from the beginning of this tenancy until December 31, 2014. The landlord provided a copy of the tenancy agreement with the landlord's Application. The landlord testified that a Notice of Rent Increase ("NRI"), dated September 29, 2014, was served upon the tenant on September 28, 2014, to raise the monthly rent from \$650.00 to \$664.00 total, a monthly increase of \$14.00. The landlord stated that this new rent was effective on January 1, 2015, which allowed three clear months' notice of the increase. The landlord provided a copy of the NRI after the hearing, at my request, as he did not provide the NRI with the landlord's Application.

The landlord testified that a security deposit of \$325.00 was paid by the tenant on May 15, 2012 and the landlord continues to retain this deposit. The landlord stated that this deposit was paid for a previous tenancy for another rental unit in a different building. The landlord indicated that this security deposit was transferred to this tenancy when the tenant began occupying the current rental unit. The landlord provided a copy of the tenancy agreement for the previous tenancy, at my request after the hearing, but this agreement indicates that a security deposit of \$375.00 was "not paid yet." In the landlord's Application, the landlord indicated that he wished to retain the tenant's security deposit of \$625.00.

The landlord testified that the tenant continues to reside in the rental unit as he entered the unit on March 3, 2015, a few days prior to this hearing, and the tenant's furniture and belongings were still there. The landlord testified that he still requires an order of possession against the tenant.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$678.00 was due on February 1, 2015. This includes the unpaid rent for February 2015 of \$664.00 plus unpaid rent of \$14.00 for January 2015. The notice indicates an effective move-out date of February 12, 2015. The landlord confirmed that no rent payments have been made by the tenant since the 10 Day Notice was served upon her.

In the landlord's Application, the landlord initially requested a monetary order of \$2,617.00, which includes three months of rent as well as a security deposit of \$625.00. The landlord stated that he requested these amounts because he had been told that he could apply for them, as he was new to the application process. At the hearing, the landlord amended his monetary claim to seek \$1,342.00 in unpaid rent. The landlord stated that rent in the amount of \$664.00 is unpaid for each of February and March 2015. The landlord indicated that rent of \$14.00 was unpaid for January 2015, as the tenant did not abide by the NRI which raised the rent by an extra \$14.00 as of January 1, 2015. The landlord indicated that the tenant only paid \$650.00 for January 2015 rent.

The landlord is also seeking to recover the \$50.00 filing fee for this Application from the tenant.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on February 1, 2015, within five days of being deemed to have received the 10 Day Notice. The tenant has not made an 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 failure of the tenant to take either of these actions within five days led to the end of this tenancy on February 15, 2015, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by February 15, 2015. As this has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I accept the landlord's undisputed evidence that rent for this rental unit was increased to \$664.00 as of January 1, 2015, as per the NRI. Although the landlord testified that the

tenant was served with the NRI on September 28, 2014, I find that the earliest the NRI could have been served upon the tenant was September 29, 2014, as the NRI indicated a date of September 29, 2014 on the notice.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$14.00 for January 2015 and \$664.00 for February 2015. These amounts were indicated on the 10 Day Notice, which the tenant did not dispute. Therefore, I find that the landlord is entitled to \$678.00 in rental arrears for the above period.

The tenant was required to vacate the rental unit by February 15, 2015. As per the landlord's evidence, the tenant continues to reside in the rental unit as of March 3, 2015 and she may still be there, causing loss to the landlord under section 7(1) of the *Act*. However, the landlord is required to mitigate its losses as per section 7(2) of the *Act*. Rent of \$664.00 was due on March 1, 2015. The tenant did not make any payments towards this rent. Therefore, I find that the landlord is entitled to \$664.00 in rental arrears for the entire month of March 2015. I make this finding because the landlord has to serve the tenant with the order of possession, possibly enforce the order of possession, examine the rental unit, repair any potential damage, advertise the rental unit and attempt to re-rent the unit. The landlord indicated that he intends to re-rent the unit to other tenants.

The landlord testified that he continues to hold the tenants' security deposit of \$325.00. However, the amount of this security deposit is unclear, as the landlord's previous tenancy agreement states that the deposit was \$375.00 and the landlord's Application states that it was \$625.00. I accept the landlord's testimony that the security deposit currently being held by the landlord is \$325.00. **In the event that the landlord holds more than \$325.00 of the tenant's security deposit, any remaining amount is to be dealt with in accordance with section 38 of the Act.**

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit of \$325.00 in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for the Application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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 \$1,067.00 against the tenant as follows:

Item	Amount
January 2015 Rent	\$664.00
Less Rent paid by Tenant for January 2015	-650.00
Unpaid February 2015 Rent	664.00
Unpaid March 2015 Rent	664.00
Less Security Deposit	-325.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$1,067.00

The landlord is provided with a monetary order in the amount of \$1,067.00 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: March 10, 2015

Residential Tenancy Branch

