



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CYCLONE HOLDINGS 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 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 two tenants did not attend the hearing, which lasted approximately 15 minutes. The landlord's agent, SR ("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 she is the manager for the landlord company named in this application and that she had authority to appear as agent at this hearing.

The landlord testified that she served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent, dated February 2, 2015 ("10 Day Notice"), by posting it to the tenants' rental unit door on the same date. The landlord provided a signed and witnessed proof of service form, with its Application. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 10 Day Notice on February 5, 2015, three days after its posting.

The landlord testified that the tenants were served with two separate copies of the landlord's application for dispute resolution hearing package ("Application") on February 21, 2015, by way of registered mail. The landlord provided Canada Post receipts and tracking numbers as proof of service with its Application. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's Application on February 26, 2015, the fifth day after their registered mailings.

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 tenants' security deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

The landlord testified that this fixed term tenancy began on July 8, 2014 and was to end on June 30, 2015. Monthly rent in the amount of \$825.00 is payable on the first day of each month. A security deposit of \$415.00 was paid by the tenants on June 20, 2014 and the landlord continues to retain this deposit. The landlord provided a copy of the tenancy agreement with its Application. The landlord stated that she saw the tenants in the rental building parking lot two days prior to this hearing. The landlord testified that the tenants are still residing in the rental unit.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$1,275.00 was due on February 1, 2015. The landlord stated that this amount included \$450.00 for January 2015 unpaid rent and \$825.00 for February 2015 unpaid rent. The notice indicates an effective move-out date of February 12, 2015. The landlord confirmed that no rent payments have been made by the tenants since the 10 Day Notice was served.

In the landlord's Application, the landlord initially requested a monetary order of \$1,275.00 total. However, in the dispute details of the application, the landlord requested \$2,125.00 total which includes: \$450.00 for January 2015 rent, \$825.00 for February 2015 rent, \$25.00 for a late fee for February 2015, and \$825.00 for March 2015 rent, if applicable. At the hearing, the landlord amended her monetary claim to seek a reduced amount of \$2,100.00 total. The landlord stated that the last rent payment made by the tenants was on January 8, 2015 for \$400.00 of the total \$825.00 sought. Accordingly, the landlord stated that \$425.00 rather than \$450.00 is owing for unpaid January 2015 rent.

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

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. The tenants 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 tenants have 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 tenants 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.

The landlord provided undisputed evidence that the tenants failed to pay rent of \$425.00 for January 2015 and \$825.00 for February 2015. Therefore, I find that the landlord is entitled to \$1,250.00 in rental arrears for the above period. The landlord also established that the tenants failed to pay the \$25.00 late fee for February 2015. I find that the landlord is entitled to the \$25.00 late fee for February 2015, pursuant to clause 10 of the tenancy agreement, and in accordance with sections 7(1)(d) and 7(2) of the *Residential Tenancy Regulation*.

The tenants were required to vacate the rental unit by February 15, 2015. As per the landlord's evidence, the tenants continue to reside in the rental unit, 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 \$825.00 was due on March 1, 2015. The tenants did not make any payments towards this outstanding rent. Therefore, I find that the landlord is entitled to \$825.00 in rental arrears for the entire month of March 2015. I make this finding because the landlord has to serve the tenants with the order of possession, possibly enforce the order of possession, examine the rental unit, repair any potential damage, and advertise and attempt to re-rent the unit, if applicable. The landlord continues to hold the tenants' security deposit of \$415.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit of \$415.00 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 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 \$1,735.00 against the tenants as follows:

| Item | Amount |
|---|-------------------|
| Unpaid January 2015 Rent | \$425.00 |
| Unpaid February 2015 Rent | 825.00 |
| Unpaid February 2015 Late Fee | 25.00 |
| Unpaid March 2015 Rent | 825.00 |
| Less Security Deposit | -415.00 |
| Recovery of Filing Fee for this Application | 50.00 |
| Total Monetary Award | \$1,735.00 |

The landlord is provided with a monetary order in the amount of \$1,735.00 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: March 19, 2015

Residential Tenancy Branch