



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SAHAR INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlords' 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 and for damage to the unit 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 their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 0944 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The individual landlord (the 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 is a principal of the corporate landlord.

The landlord testified that he served the tenant with the dispute resolution package on 26 February 2015 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

The landlord testified that he served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 10 February 2015 both in person and by posting the notice to the tenant's door. On the basis of this evidence, I am satisfied that the tenant was served with the 10 Day Notice pursuant to section 88 of the Act.

Preliminary Issue – Withdrawal of Damages Claim

At the hearing, the landlord informed me that the tenant was still occupying the rental unit. I informed the landlord that I would want to hear submissions from him with respect to prematurity of the claim for damage to the rental unit. The landlord informed me that he wished to withdraw the claim and reapply at a later time should he decide it is in the landlords' best interest.

Paragraph 64(3)(c) allows me to amend an application for dispute resolution.

As there is no prejudice to the tenant by allowing the landlords to withdraw the damage claim, I grant the landlords' amendment request.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

On 1 January 2009, the tenant began occupying the rental unit. There is no written tenancy agreement in respect of this tenancy. Current monthly rent is \$485.00 and is due on the first. The landlord testified that the landlords collected a security deposit in the amount of \$230.00 on 1 January 2009.

On 10 February 2015, the landlord issued the 10 Day Notice to the tenant. The 10 Day Notice was dated 10 February 2015 and set out an effective date of 20 February 2015. The 10 Day Notice set out that the tenant failed to pay \$485.00 in rent that was due on 1 February 2015.

The landlord testified that he has not received any payments from the tenant since the issuance of the 10 Day Notice. The landlord testified that the tenant has not provided

the landlords with any receipts for emergency repairs. The landlord testified that there are no outstanding orders of the Residential Tenancy Branch in respect of this tenancy.

The landlords provided me with the monthly ledger for the residential property. That ledger indicates that the tenant did not pay her monthly rent for February.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 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 to vacate the premises by 20 February 2015. As that has not occurred, I find that the landlords are entitled to a two-day order of possession.

The landlord has provided sworn and uncontested testimony that the tenant has unpaid rental arrears totaling \$485.00. I find that the landlords have proven their entitlement to the rent arrears. The landlords are entitled to a monetary order for the unpaid rent.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for this application.

The landlords applied to keep the tenant's security deposit. I allow the landlords to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$305.00 under the following terms:

Item	Amount
Unpaid February Rent	\$485.00
Recover Filing Fee	50.00
Offset Security Deposit	-230.00
Total Monetary Order	\$305.00

The landlords are provided with these orders 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 these orders, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

The landlords are provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: March 26, 2015

Residential Tenancy Branch

