



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOOKOUT EMERGENCY AID SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, 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, which lasted approximately 22 minutes. The landlord's agent, HK ("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 testified that she had authority to represent the landlord company named in this application, as an agent at this hearing.

The landlord testified that the tenant was served with two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities, both dated February 13, 2015 ("two 10 Day Notices"), by way of posting it to the tenant's 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 two 10 Day Notices on February 16, 2015, three days after their posting.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on March 6, 2015, by way of registered mail. The landlord provided a Canada Post tracking number orally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was

deemed served with the landlord's Application on March 11, 2015, five days 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 and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

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 confirmed that this rental unit is permanent housing and that no transitional housing or health services are offered to the tenant at this rental building. The landlord testified that this month to month tenancy began on May 23, 2014. Monthly rent in the amount of \$365.00 is payable on the first day of each month. A security deposit of \$182.50 was paid by the tenant and the landlord continues to retain this deposit. The landlord testified that the tenant continues to reside in the rental unit, as she performed an inspection in February 2015 and the tenant's belongings were still in the unit. The landlord stated that an "intent to rent" form governs this tenancy but a copy was not provided for this hearing.

The landlord issued the two 10 Day Notices, indicating that rent in the amount of \$365.00 was due on each of February 1 and March 1, 2015. Both notices indicate effective move-out dates of February 23, 2015. The landlord stated that she was not advised by the landlord owner that rent was unpaid for January 2015 until February 2015, when the landlord was instructed to issue the two 10 Day Notices.

The landlord provided a copy of three letters, dated February 6, 13 and 24, 2015, which she says were served upon the tenant by posting to his rental unit door. The landlord indicated that she received no response from the tenant after these letters were served upon him and that she noticed the letters were removed from the rental unit door and posted on the inside of the tenant's door when she performed an inspection in February 2015. The letters advise the tenant that he owes rent for January and February 2015 and that eviction proceedings would be initiated if the tenant did not pay his rent.

The landlord seeks a monetary order of \$1,460.00 for unpaid rent. The landlord indicated that rent of \$365.00 is unpaid for each month from January to April 2015, totalling \$1,460.00. The landlord indicated no partial payments have been made by the tenant since the two 10 Day Notices were issued. The landlord stated that the last rent payment made by the tenant was in December 2014. The landlord requested the entire month of April 2015 rent, indicating that she will likely need to serve and enforce the order of possession before attempting to re-rent the rental unit.

The landlord is also seeking to recover the filing fee of \$50.00 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 January 1 and February 1, 2015, within five days of being deemed to have received the two 10 Day Notices. 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 two 10 Day Notices. 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 26, 2015, the corrected effective dates on the two 10 Day Notices. In this case, this required the tenant and anyone on the premises to vacate the premises by February 26, 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 tenant failed to pay rent of \$365.00 for each month from January to March 2015. Therefore, I find that the landlord is entitled to \$1,095.00 in rental arrears for the above period.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove

the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenant caused a loss of rent for April 2015.

The tenant was required to vacate the rental unit by February 26, 2015, the corrected effective dates on the two 10 Day Notices. As per the landlord's evidence, the tenant continues to reside in the rental unit, causing loss to the landlord under section 7(1) of the *Act*. Rent of \$365.00 was due on April 1, 2015. Therefore, I find that the landlord is entitled to \$365.00 in rental arrears for the entire month of April 2015. I make this finding because the landlord may have to serve the tenant 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.

The landlord continues to hold the tenant's security deposit of \$182.50. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$182.50 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 \$1,327.50 against the tenant as follows:

Item	Amount
Unpaid January 2015 Rent	\$365.00
Unpaid February 2015 Rent	365.00
Unpaid March 2015 Rent	365.00

Unpaid April 2015 Rent	365.00
Less Security Deposit	-182.50
Recovery of Filing Fee for this Application	50.00
Total Monetary Award	\$1,327.50

The landlord is provided with a monetary order in the amount of \$1,327.50 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: April 09, 2015

Residential Tenancy Branch

