



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Stan Karon Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, MNR, MNDC, MNSD, FF; MT, CNR

Introduction

This hearing concerns 2 applications: i) by the landlord for an order of possession for unpaid rent / a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and ii) by the tenant for more time to make an application to cancel a notice to end tenancy / and cancellation of a notice to end tenancy for unpaid rent. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the month-to-month tenancy began on May 01, 2009. Monthly rent is due and payable in advance on the first day of each month. Pursuant to this tenancy agreement, monthly rent is \$1,325.00. Further, according to this tenancy agreement a security deposit of \$662.50 was collected on April 30, 2009.

Ownership of the property changed hands in 2011, and the new / current landlord and the tenant signed a new written tenancy agreement. While the name of the landlord is changed from the original tenancy agreement, the terms set out in the new written agreement remain unchanged.

Pursuant to a "Notice of Rent Increase" dated October 21, 2013, rent was increased by \$40.00 to \$1,365.00 effective February 01, 2014 ($\$1,325.00 + \$40.00 = \$1,365.00$).

As a result of rent which remained unpaid when due on February 01, 2015, the landlord issued a 10 day notice to end tenancy for unpaid rent dated February 19, 2015. The

notice was served by way of registered mail. Evidence includes the Canada Post tracking number for the registered mail. The Canada Post website informs that the item was “accepted at the Post Office” on February 19, 2015, and that the tenant took delivery on March 02, 2015. The tenant’s application for dispute resolution was filed on March 03, 2015, and the landlord’s application was later filed on March 18, 2015.

Analysis

Based on the documentary evidence and the affirmed testimony of the parties, the various aspects of the respective applications and my findings are set out below.

TENANT

Application for more time to make an application to cancel a notice to end tenancy

Details pertaining to the relevant date(s) of service and deadline(s) for filing of applications are set out immediately below. In short, the tenant’s application to dispute a 10 day notice to end tenancy for unpaid rent was filed 1 day late. Section 66 of the Act speaks to **Director’s orders: changing time limits**, and provides in part as follows:

66(1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) *[starting proceedings]* or 81(4) *[decision on application for review]*.

Further, Residential Tenancy Policy Guideline # 36 addresses “Extending a Time Period” and provides in part:

The word “exceptional” means that an ordinary reason for a party not having complied with a particular time limit will not allow an Arbitrator to extend a time limit. The word “exceptional” implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a “reason” without any force of persuasion is merely an excuse. Thus, the party putting forward said “reason” must have some persuasive evidence to support the truthfulness of what is said.

The tenant claims that he attended the Branch office on March 02, 2013, without sufficient funds to file his application. He further claims he was neither aware, nor fully informed at that time of the option to apply for waiving of the filing fee. He returned to the Branch office the following day, March 03, 2015, with additional documentation, and filed his application after successfully applying to have the filing fee waived. In the

result, his application was filed 1 day late. Having considered the tenant's application, I find he has not met the burden of proving there were "exceptional circumstances" for the late filing of his application. Accordingly, this aspect of his application is dismissed.

Cancellation of a notice to end tenancy for unpaid rent

I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated February 19, 2015. As the notice was served by registered mail and "accepted at the Post Office" on that same date, pursuant to section 90 of the Act which addresses **When documents are considered to have been received**, I find that the notice is deemed to have been received 5 days later on February 24, 2015.

Pursuant to section 46(4) of the Act, the tenant had 5 days after receiving the notice to either pay the outstanding rent, or file an application to dispute the notice. I find that the 5th day after the tenant's deemed receipt of the notice on February 24, 2015, is Monday, March 02, 2015 (as the arithmetic 5th day falls on a Sunday). While the tenant did not pay the outstanding rent, he filed an application to dispute the notice on March 03, 2015. I find that as the application to dispute the notice was filed late, and as the tenant's application for more time to dispute a notice to end tenancy has been dismissed, the tenant's application to cancel the notice must also be dismissed.

LANDLORD

Order of possession

As the tenant's application for more time to make an application to cancel a notice to end tenancy, and his application to cancel a notice to end tenancy have both been dismissed, and as the landlord has filed an application for an order of possession following the issuance and proper service of a 10 day notice to end tenancy for unpaid rent, I find that the landlord has established entitlement to an **order of possession**.

Unpaid rent

2011

\$200.00: (8 x \$25.00)

Shortfall of \$25.00 for each of 8 months from May to December
(\$1,300.00 paid versus \$1,325.00 due)

2012

\$300.00: *(12 x \$25.00)*

*Shortfall of \$25.00 for each of 12 months from January to December
(\$1,300.00 paid versus \$1,325.00 due)*

2013

\$275.00: *(11 x \$25.00)*

*Shortfall of \$25.00 for each of 11 months from January to November
(\$1,300.00 paid versus \$1,325.00 due)*

2014

As previously noted, rent was increased from \$1,325.00 to \$1,365.00 effective February 01, 2014. It is also noted, however, that the allowable rent increase in 2014 is limited to 2.2%, which in this case is \$29.15 ($\$1,325.00 \times 2.2\%$). Accordingly, I find that the total allowable rent effective from February 01, 2014 is \$1,354.15 ($\$1,325.00 + \29.15).

Amounts allegedly owed are as follows:

\$1,145.00: *July (only \$220.00 paid by tenant)*

\$1,365.00: *August*

\$1,365.00: *September*

\$1,365.00: *October*

Following from the above, I find that the allowable amounts owed are as follows:

\$1,134.15: *July (\$1,354.15 - \$220.00)*

\$1,354.15: *August*

\$1,354.15: *September*

\$1,354.15: *October*

Sub-total entitlement: \$5,196.60

MINUS Overpayment by tenant of **\$75.95** (7 x \$10.85)
(\$1,365.00 - \$1,354.15 = \$10.85) for each of the following 7 months: February,
March, April, May, June, November and December

Total entitlement: \$5,120.65 (\$5,196.60 - \$75.95)

2015

Amounts allegedly owed are as follows:

\$830.00: February (only \$535.00 paid by tenant)
\$1,365.00: March
\$1,365.00: April

Following from the above, I find that the allowable amounts owed are as follows:

\$819.15: February (\$1,354.15 - \$535.00)
\$1,354.15: March
\$1,354.15: April

Sub-total entitlement: \$3,527.45

MINUS Overpayment by tenant of **\$10.85** for January (\$1,365.00 - \$1,354.15)

Total entitlement: \$3,516.60 (\$3,527.45 - \$10.85)

Fees assessed for late payment of rent

Section 7 of the Regulation addresses **Non-refundable fees charged by landlord**, in part:

7(1) A landlord may charge any of the following non-refundable fees:

- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) subject to subsection (2), an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1)(d) or (e) unless the tenancy agreement provides for that fee.

As neither of the 2 tenancy agreements specifically provide for the assessment of a fee in the event of a late payment of rent, this aspect of the application is hereby dismissed.

Service fees assessed by the bank for return of tenant's cheques

The tenant does not dispute this aspect of the landlord's claim. I find there is evidence of 6 separate service fees assessed by the bank for return of the tenant's cheques. I also find that as a service fee has been assessed on each occasion in the amount of \$5.00, the landlord has established entitlement to compensation of **\$30.00** (6 x \$5.00).

\$100.00: *filing fee*

As the landlord has generally succeeded with the principal aspects of the application, I find that the landlord has also established entitlement to recovery of the full filing fee.

Sub- total entitlement: \$9,542.25

I order that the landlord retain the security deposit of **\$662.50**, and I grant the landlord a **monetary order** for the balance owed of **\$8,879.75** (\$9,542.25 - \$662.50).

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$8,879.75**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims 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 08, 2015

Residential Tenancy Branch

