



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NAV HOLDINGS
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 this hearing, although I waited until 9:49 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlord provided sworn testimony and documentary evidence to show that a 10 Day Notice to End Tenancy for Unpaid Rent was served to the tenant on March 3, 2015 by posting it on the tenant's rental unit door. The landlord gave sworn testimony that he personally served the tenant with the Application for Dispute Resolution hearing package with Notice of Hearing on April 7, 2015. I accept that the testimony of the landlord and find that, pursuant to section 88, 89 and 90 of the *Act*, the tenant was deemed served with the 10 Day Notice and the landlord's Application for Dispute Resolution hearing package on March 6, 2015 (3 days after its posting) and April 7, 2015 respectively.

Issue(s) 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 towards any monetary award? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified (with documentary evidence) that this tenancy began March 1, 2011. He testified that the original rental amount was \$1050.00 and the current rental amount was \$1114.96 payable on the first of each month. The landlord testified that he continues to hold a \$525.00 security deposit paid by the tenant on February 20, 2011. The landlord submitted a copy of the tenancy agreement to support this testimony. The landlord sought to retain that security deposit, obtain a monetary order for unpaid rent and the filing fee for this application.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent to the tenant. The landlord testified that the tenant did not pay the rental arrears, including March 2015 rent after receiving the 10 Day Notice on March 6, 2015. After the expiration of that 10 Day period and a further period, the landlord applied for an Order of Possession. The landlord testified that, as of the date of this hearing, the tenant continues to reside in the rental unit.

The landlord is also seeking a monetary award for several months of rental arrears including but not limited to March, April and May 2015. The landlord testified that the tenant started having difficulties meeting her rental obligations in February 2013. At that time, she began to make partial payments and often pay the balance outstanding the following month. The landlord testified, submitting documents in support, that as of November 2014, the tenant was in arrears \$1364.56. The landlord testified that, in December and January, the tenant attempted to make additional payments. The landlord noted that receipts indicating "use and occupancy only" were provided to the tenant for any and all payments made by the tenant while still in arrears, including February and March 2015 payments. The landlord testified that, by the date of this hearing (May 2015), the tenant's arrears total \$1804.32.

The landlord also submitted an accounting of payments by the tenant over the course of the tenancy. It reflected the landlord's testimony that, while the tenant has made payments towards her rent and the rental arrears, a remaining balance of \$1804.32 remains.

Analysis

While the tenant was not present for this hearing, the landlord ensured that the tenant's payments towards her rental arrears were noted. I find that the landlord has proved credible in his testimony and sufficiently supported his testimony with proof on a balance of probabilities with respect to the tenancy and the tenant's lack of full payment of rent.

The tenant failed to pay the March 2015 rent or the outstanding rental arrears in full within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 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 March 16, 2015. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

I find that the landlord is entitled to receive an order for unpaid rent in March 2015. I accept the testimony of the landlord that March rent was not paid on or after the issuance of the 10 Day Notice to end tenancy. I accept this uncontested evidence offered by the landlord that there are dated rental arrears with respect to this tenancy. I accept the landlord's sworn and undisputed testimony that the tenant continues to reside in the rental unit as of the date of this hearing. I also accept the landlord's testimony that the tenant has not paid her full rent for April or May 2015. I am issuing the attached monetary order that includes the landlord's application for \$1804.32 in unpaid rent.

The monetary order for the month of May 2015 is based on the testimony of the landlord that, as of the date of this hearing, the tenant continues to reside in the rental unit and has not paid full rent for the month of May 2015. Given all of the circumstances, the landlord testified that he will not likely be able to re-rent the unit before the end of May and will have some rental loss with respect to the month of May 2015 regardless of when the tenant vacates the rental unit. I find the landlord is entitled to recover rent from the tenant for the entire month of May 2015.

The landlord testified that he continues to hold a security deposit of \$525.00 plus any interest payable from February 20, 2011 to the date of this decision for this tenancy. I

will allow the landlord to retain the security deposit *plus any interest* in partial satisfaction of the monetary award. There is no interest payable for 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 this application.

Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlords as follows:

Item	\$
Rental Arrears	\$1804.32
Less Security Deposit	-525.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$1329.32

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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: May 15, 2015

Residential Tenancy Branch

