



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES 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 tenants did not attend. The landlord attended as did one witness for the landlord. The landlord was given full opportunity to be heard, to present evidence and to make submissions. The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent was served to the tenant on May 4, 2015 by posting on the door of the rental unit. The landlord gave sworn testimony and documentary evidence that she served the tenants with the Application for Dispute Resolution hearing package on May 27, 2015 by registered mail. She testified that this mail was "returned to sender". Pursuant to section 89 and 90 of the *Act*, and in consideration of the Residential Tenancy Policy Guidelines with respect to deemed service, I find that the tenant was deemed served with the 10 Day Notice on May 7, 2015 and the Application for Dispute Resolution hearing package on June 1, 2015.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenants' security deposit?

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

Background and Evidence

This tenancy began on March 1, 2014 as a one year fixed term tenancy. The rental amount for this unit is \$1255.00 payable on the first of each month. The landlord testified that she continued to hold the \$612.50 security deposit that the tenants paid on February 4, 2014.

The landlord has applied for an Order of Possession for unpaid rent for the month of May 2015. The landlord testified that the tenant did not pay rent of \$1255.00 due on May 1, 2015. By way of payment history, the landlord testified that the tenant's August 2014 rent cheque did not clear; the tenant's November 2014, December 2014 and January 2015 were paid late.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on May 4, 2015. This notice was posted on the tenant's door and, in accordance with the *Act*, it was deemed served on May 7, 2015. The landlord testified that the tenant did not pay the May 2015 rent after receiving the 10 Day Notice. The landlord testified that, as of the date of this hearing, the tenant has not paid rent for May 2015, June 2015 or July 2015. The landlord testified that the tenant made payments towards his rental arrears in January, February and March 2015.

The landlord's witness, the property manager testified that he spoke to the tenant on May 15, 2015 regarding his unpaid rent but that the tenant made no promises to pay the outstanding amounts.

The landlord originally applied for a monetary award of \$1335.00. The landlord testified that, since the tenants have not paid rent since this application was made, the tenants are now in arrears for 3 months' rent. The landlord sought a monetary order for the months of May, June and July 2015 totalling \$3765.00. The landlord also sought \$75.00 in late fees (\$25.00 per month) and to recover the \$50.00 filing fee. The total award the landlord sought was \$3890.00.

Analysis

The tenant failed to pay the May 2015 rent 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 May 17, 2015 (the corrected date of the Notice to End

Tenancy). 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 3765.00 for the months of May, June and July 2015. I accept the landlords sworn and undisputed testimony that the tenant has made no rental payments for those three months. I am issuing the attached monetary order that includes the landlord's application for \$3765.00 in unpaid rent.

The landlord also applied for \$75.00 in fees for late payment of rent for the months of May, June and July 2015. The landlord provided a copy of the written tenancy agreement and its addendum which established this late payment fee. I find that the landlord is entitled to a \$25.00 late fee for the months of May, June and July 2015.

The landlord testified that she continues to hold a security deposit of \$612.50 plus any interest from February 4, 2014 to the date of this decision for this tenancy. There is no interest payable for this period. I will allow the landlord to retain the security deposit in partial satisfaction of the monetary award. And, 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 landlords 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:

| | |
|---|------------------|
| Rental Arrears for May, June, July 2015 (\$1255 x 3 = 3765.00) | \$3765.00 |
| Late Payment Fees for May, June, July 2015 (\$25.00 x 3 = 75.00) | 75.00 |
| Less Security Deposit | -612.50 |
| Recovery of Filing Fee for this application | 50.00 |
| Total Monetary Award | \$3277.50 |

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: July 13, 2015

Residential Tenancy Branch

