



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, 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, pursuant to section 67;
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The two tenants did not attend the hearing, which lasted approximately 19 minutes. The landlord's agent, JM ("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 confirmed that she is the area manager for the landlord company named in this application and that she had authority to represent the landlord company as an agent at this hearing.

The landlord testified that the tenants were each served with a separate copy of the landlords' application for dispute resolution hearing package ("Application") on May 27, 2015, by way of registered mail. The landlord provided two Canada Post tracking numbers verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's Application on June 1, 2015, five days after its registered mailing.

The landlord testified that the tenants had vacated the rental unit and the landlord had already regained possession of the rental unit. During the hearing, the landlord withdrew the Application for an order of possession for unpaid rent. Accordingly, this portion of the landlord's Application is withdrawn.

Issues to be Decided

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

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

Background and Evidence

The landlord testified that this month-to-month tenancy began on November 1, 2013. The landlord stated that monthly rent in the amount of \$1,165.00 was payable on the first day of each month. A security deposit of \$570.00 was paid by the tenants and the landlord continues to retain this deposit.

The landlord provided a copy of the written tenancy agreement with its Application. The tenancy agreement indicates that rent of \$1,140.00 is due each month. However, the landlord confirmed that a legal notice of rent increase would have been issued to the tenant in accordance with the *Residential Tenancy Regulation* amount of 2.2% for 2014, to raise the rent from \$1,140.00 to \$1,165.00. The landlord confirmed that she did not submit a copy of a notice of rent increase for this hearing, nor did she have a copy in front of her during the hearing. The landlord could not recall the date of such a notice or the effective date that the increase would have taken effect.

The landlord stated that she was alerted to moving trucks in the area and a bad odour at the rental unit, after which a 24-hour written notice to enter the rental unit was posted by the landlord to the tenants' door on June 5, 2015. The landlord confirmed that entry to the rental unit was gained by the landlord on June 10, 2015 and a notice to declare that the unit had been abandoned was posted on June 11, 2015. The landlord confirmed that a move-out inspection and report were completed on June 12, 2015, without the tenants. The landlord confirmed that the tenants did not return to the rental unit after the landlord regained possession on June 12, 2015.

The landlord originally sought a monetary order of \$3,495.00 total for unpaid rent from May to July 2015, inclusive. At the hearing, the landlord confirmed that she was no longer seeking July 2015 rent of \$1,165.00, even though she was aware that she could pursue this amount if she wished. The landlord confirmed that she was amending her application to seek only May and June 2015 unpaid rent, totalling \$2,330.00. The landlord also seeks to recover the \$50.00 filing fee for this Application from the tenants.

The landlord confirmed that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 15, 2015 ("10 Day Notice"), was posted to the tenants' rental unit

door on the same date. The notice indicates an effective move-out date of May 24, 2015. The notice states that rent of \$1,165.00 was due on May 1, 2015.

The landlord confirmed that the tenants have not paid rent for May or June 2015. The landlord provided a copy of a tenancy rent ledger from November 2014 to June 2015, showing that rent was unpaid for May and June 2015. The landlord stated that she was seeking the entire month of rent for June 2015, despite the fact that the tenants did not return after June 12, 2015, because when the tenants abandoned the rental unit, it was full of garbage that had to be disposed and numerous repairs that had to be made. The landlord stated that these repairs have taken a long time and that the rental unit will be occupied by new tenants as of August 1, 2015.

Analysis

Section 7(1) of the *Act* establishes that tenants who do 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 tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenants failed to pay rent for May and June 2015. Although the 10 Day Notice indicates that \$1,165.00 was due for May 2015 rent, the landlord did not provide a legal notice of rent increase to support her testimony, despite the fact that this notice should have been available to the landlord at the time of this hearing and should have been submitted prior to this hearing. While I do not disbelieve the landlord's testimony regarding the rent, oral evidence provided in the place of available documentary evidence is given less weight as it is inherently less reliable. This is especially the case where documentary evidence is available that could easily substantiate the landlord's case: the best evidence available should be provided. On a balance of probabilities and for the reasons stated above, I find that as per the tenancy agreement, rent of \$1,140.00 was due each month. Therefore, I find that the landlord is entitled to \$1,140.00 in rental arrears for May 2015.

As per section 26 of the *Act*, rent is due on the date indicated in the tenancy agreement. I find that rent of \$1,140.00 was due on May 1, 2015, as per the tenancy agreement. Therefore, I find that the landlord is entitled to \$1,140.00 in rental arrears for the entire month of June 2015. I make this finding because rent is due on June 1, 2015. The tenants did not provide notice to the landlord that they were vacating and the landlord discovered the rental unit was abandoned between June 10 and 12, 2015. I also find that the landlord had to clean the rental unit and repair damages and the landlord has been unable to re-rent the rental unit until August 1, 2015.

The landlord continues to hold the tenants' security deposit of \$570.00. Although the landlord did not apply to retain this deposit in partial satisfaction of the monetary award, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit of \$570.00 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 it is entitled to recover the \$50.00 filing fee paid for the Application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,760.00 against the tenants as follows:

Item	Amount
Unpaid May 2015 Rent	\$1,140.00
Unpaid June 2015 Rent	1,140.00
Less Security Deposit	-570.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Award	\$1,760.00

The landlord is provided with a monetary order in the amount of \$1,760.00 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 this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. The landlord's Application for an order of possession for unpaid rent, is withdrawn.

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 10, 2015

Residential Tenancy Branch