



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICE LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: OPR MNR MNSD FF
For the tenant: MT CNR FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord originally applied for an order of possession for unpaid rent or utilities and for a monetary order unpaid rent or utilities through the Direct Request process.

The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) and for a monetary order in the amount of \$1,321 as compensation for loss or money owed and “other” and provided details in relation to an allegation that the landlord left a gated parking gate unrepaired and wanted compensation as a result.

On June 17, 2015, an Adjudicator wrote an interim decision adjourning the landlord’s original Application for Dispute Resolution submitted through the Direct Request process to a participatory hearing scheduled for this date, July 28, 2015 at 2:30 p.m.

The tenant was provided with a Notice of Hearing dated July 13, 2015 after the tenant filed his Application for Dispute Resolution indicating the hearing date and time of Tuesday, July 28, 2015 at 2:30 p.m., Pacific Time. Only the agent for the landlord (the “agent”) and the owner of the property (the “owner”) attended the hearing on behalf of the named landlord company. As the tenant did not attend the hearing to present the merits of his application, the tenant’s application was **dismissed, without leave to reapply**, after the 10 minute waiting period had elapsed. The hearing continued with consideration of the landlord’s application.

The hearing process was explained to agent and owner, and the agent and owner were given an opportunity was given to ask questions about the hearing process. Thereafter the landlord gave affirmed testimony, was provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

The agent and owner testified that they served the tenant by registered mail which was mailed to the rental unit address and that the tenant continues to occupy the rental unit. A tracking number was submitted in evidence. Based on the June 17, 2015, the Arbitrator found that the tenant was deemed served on June 20, 2015 based on the tracking number provided for the Direct Request process. I accept that the tenant was served in accordance with the *Act* as a result. I note that refusal or failure to accept service is not grounds for a Review Consideration.

Preliminary and Procedural Matter

The landlord testified that in addition to the unpaid portion of June 2015 rent owed, the tenant has subsequently not paid any rent for July 2015. As a result, the landlord requested to amend the application to include rent owed for July 2015 also. The landlord also stated that the tenant continues to occupy the rental unit. I find that this request to amend the application does not prejudice the respondent tenant as the tenant would be aware that rent is due pursuant to the tenancy agreement, I amend the application to \$1,853.25, which consists of \$573.25 for the unpaid portion of June 2015, plus \$1,280 for the full month of July 2015 in unpaid rent.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on October 1, 2009, which reverted to a month to month tenancy after September 30, 2010. Monthly rent in the amount of \$1,215 plus \$65 in parking for a total amount of rent plus parking in the amount of \$1,280 is due on the first day of each month. The tenant paid a security deposit of \$320 on July 1, 2002 when the original tenancy began, before the fixed term tenancy was entered into described above. The landlord continues to hold the tenant's security deposit.

The agent and owner testified that a 10 Day Notice dated June 3, 2015 was posted to the tenant's door on June 3, 2015. The effective vacancy date listed on the 10 Day Notice is June 16, 2015. The tenant failed to attend the hearing this date to dispute the 10 Day Notice, and the tenant's application was dismissed.

The agent and owner verbally made an oral request for an order of possession during the hearing.

Analysis

Based on the undisputed testimony of the landlord and the documentary evidence before me, and on the balance of probabilities, I find the following.

Order of possession – Section 55 of the *Act* requires that I must grant an order of possession once I have dismissed the tenant's application to dispute a notice to end tenancy, and the landlord has made a request for an order of possession. As the tenant failed to attend the hearing, and the tenant's application to cancel the 10 Day Notice dated June 3, 2015 was dismissed, **I grant** the landlord an order of possession pursuant to section 55 of the *Act* **effective two (2) days** after service on the tenant.

Unpaid rent/loss of rent – Section 26 of the *Act* requires that a tenant pay rent when it is due in accordance with the tenancy agreement, whether or not the landlord complies with the *Act*. Therefore, I find the tenant has breached section 26 of the *Act* by failing to pay \$573.25 of June 2015 rent and that the landlord has suffered a loss of July 2015 rent in the amount of \$1,280.

The landlord continues to hold the tenant's security deposit of \$320 which has accrued \$11.34 in interest since July 1, 2002 for a total security deposit balance of \$331.34. As the landlord's claim had merit, **I grant** the landlord the recovery of the **\$50** filing fee.

I find that the landlord has established a total monetary claim of **\$1,903.25** as follows:

Item 1	Unpaid portion of June 2015 rent	\$573.25
Item 2	Loss of July 2015 rent	\$1,280
Item 3	Recovery of filing fee	\$50
SUB-TOTAL		\$1,903.25
<i>Less tenant's \$331.34 security deposit including interest</i>		<i>-(\$331.34)</i>
TOTAL AMOUNT OWING BY TENANT TO LANDLORD		\$1,571.91

I ORDER the landlord to retain the tenant's full security deposit with interest of \$331.34 in partial satisfaction of the landlord's monetary claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$1,571.91**.

Conclusion

The tenant's application was dismissed

The landlord's application was successful.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

The landlord has established a total monetary claim of \$1,903.25 and has been ordered to retain the tenant's full security deposit including interest of \$331.34 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$1,571.91. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 28, 2015

Residential Tenancy Branch

