



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Eviction Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, 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, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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 his filing fee for this application from the tenant pursuant to section 72.

The landlord's agent attended the hearing by conference call and gave undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord's agent stated that the tenant was served with the Notice of Hearing Package via Canada Post Registered Mail on June 30, 2015. The landlord's agent provided in her direct testimony the Customer Receipt Tracking number as confirmation of service. While waiting for the tenant to connect to the conference call an online search of the Canada Post Website confirmed that the Notice of Hearing Package was sent via Canada Post Registered Mail on June 30, 2015, attempted service was made twice where a notice was left each time by Canada Post and the Notice of Hearing Package was returned unclaimed to the landlord's agent on July 24, 2015. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 of the *Act*.

The landlord stated that the tenant was served with a 10 Day Notice to End Tenancy issued for Unpaid Rent (the 10 Day Notice) on June 1, 2015 by personal service. The landlord submitted a copy of a proof of service document dated June 3, 2015 by the landlord's agent as confirmation of service. The 10 Day Notice states that rent of

\$3,500.00 was in arrears and displayed an effective end of tenancy date of June 12, 2015.

Section 8 of the *Residential Tenancy Regulation* reads in part as follows:

8 For the purposes of section 59 (2) (c) of the Act [*starting dispute resolution*], an applicant for dispute resolution must pay the following fees: ...

(b) for a monetary application if the amount sought is in excess of \$5 000, \$100;

(c) for any other application, \$50.

At the outset of the hearing, the landlord's agent stated that she was aware that the \$6,300.00 monetary claim she was requesting exceeds the limit of the \$5,000.00 claimed based upon the \$50.00 filing fee. The landlord's application is limited to the \$5,000.00 amount claimed by the landlord.

Issue(s) to be Decided

Is the landlord entitled to an order of possession or unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss?

Is the landlord entitled to an order authorizing him to retain all or part of the security deposit?

Is the landlord entitled to an order authorizing him to recover his filing fee?

Background and Evidence

The landlord's agent provided undisputed affirmed testimony that the monthly rent was \$700.00, payable on the 1st of each month and that a security deposit of \$350.00 was paid.

The landlord's agent stated that the tenant has failed to pay rent from December 2014 until June 1, 2015 for 6 months resulting in the issuance of the 10 Day Notice dated June 1, 2015. The landlord's agent also stated that the tenant still occupies the rental unit and sought recovery of the loss of rental income for June, July and August of 2015. She testified that the tenant has failed to pay any rent since the 10 Day Notice was served to the tenant. She was unaware of any application for dispute resolution from the tenant to dispute the notice. The landlord's agent requested an order of possession

and a monetary order for unpaid rent and the loss of rental income for June, July and August as the tenant still occupied the rental unit at the time of this hearing.

Analysis

Pursuant to section 46 of the *Act*, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by June 12, 2015. As that has not occurred, I find that the landlord is entitled to a two-day order of possession. The landlord will be given a formal order of possession which must be served on the tenant(s). If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this order in the Supreme Court of British Columbia.

The landlord has provided affirmed and uncontested testimony that the tenant has unpaid rental arrears and loss of rental income totaling \$6,300.00. This amount was comprised of unpaid rent of \$700.00 for each of the six months from December 2014 to May 2015, and the loss of rental income of \$700.00 for each of June, July and August 2015. I find that the landlord has proven his entitlement to the rent arrears and loss of rental income totalling, \$6,300.00. However, the landlord's monetary claim is limited to \$5,000.00 pursuant to section 8 of the *Residential Tenancy Regulation*.

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the security deposit 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 the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$4,700.00 under the following terms:

Item	Amount
Monetary Claim for Unpaid Rent and Loss of Rental Income Allowed pursuant to Sec.8 <i>Residential Tenancy Regulation</i>	5,000.00
Offset Security Deposit	-350.00
Recovery of Filing Fee	50.00
Total Monetary Order	\$4,700.00

The landlord is provided with a formal copy of monetary order and the tenant must be served with this order as soon as possible. Should the tenant(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme 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: August 28, 2015

Residential Tenancy Branch

