



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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, 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 its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1113 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The agent testified that she served the tenant with the dispute resolution package on 17 June 2015 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with dispute resolution package pursuant to sections 89 and 90 of the Act.

The agent testified that she personally served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 9 June 2015. On the basis of this evidence, I am satisfied that the tenant was served with 10 Day Notice pursuant to section 88 of the Act.

Preliminary Issue – Amendment to Landlord's Application

Paragraph 64(3)(c) allows me to amend an application for dispute resolution.

The agent asked that I exercise my discretion to amend the landlord's application to include rent loss for August (\$600.00) and a bank fee for a dishonoured cheque (\$25.00). As the tenant reasonably ought to have known that these amounts were owed if she did not return possession of the rental unit to the landlord and did not pay for her use and occupancy of that unit, I have allowed the amendment as there is no undue prejudice to the tenant.

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 and losses? Is the landlord entitled to retain the tenant's security deposit? Is the landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 April 2015. The parties entered into a written tenancy agreement on that date. At the beginning of the tenancy a community organization provided \$300.00 to the landlord for the tenant's security deposit. Monthly rent of \$600.00 is due on the first. The tenancy agreement sets out at addendum clause "B" that the landlord is entitled to a \$25.00 fee for late payments, returned or non-sufficient fund cheques.

On 9 June 2015, the landlord issued the 10 Day Notice to the tenant. The 10 Day Notice was dated 5 June 2015 and set out an effective date of 15 June 2015. The 10 Day Notice set out that the tenant failed to pay \$600.00 in rent that was due on 1 June 2015.

On 12 June 2015, the tenant paid \$150.00 towards her rental arrears. The landlord issued a receipt to the tenant that the payment was received on the basis of "use and occupancy only". The agent testified that the landlord has not received any payments since 12 June 2015. The landlord provided a ledger print out that shows that as at 15 June 2015 the tenant had total arrears of \$500.00.

The agent testified that she was not aware of any reason that would permit the tenant to deduct any amount from rent. The agent testified that the landlord or its agents have not done anything that would indicate an intent to waive enforcement of the 10 Day Notice.

The landlord claims for a monetary order totaling \$1,500.00:

Item	Amount
May NSF Fee	25.00
June Rent	\$600.00
June NSF Fee	25.00
Payment Received for Use and Occupancy (12 June 2015)	-150.00
July Rent	600.00
July NSF Fee	25.00
August Rent	600.00
August NSF Fee	25.00
Retain Security Deposit	-300.00
Recover Filing Fee	50.00
Total Monetary Order Sought	\$1500.00

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 in full 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 his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by 19 June 2015, the corrected effective date of the 10 Day Notice. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The agent has provided sworn and uncontested testimony that the tenant has unpaid rental arrears totaling \$1,650.00. I find that the landlord has proven its entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent.

Paragraph 7(1)(d) of the *Residential Tenancy Regulations* (the Regulations) provides that a landlord may charge an administration fee of \$25.00 for late payment of rent or a dishonoured payment. Pursuant to subsection 7(2) the fee may only be applied if the tenancy agreement provides for that fee. The tenancy agreement provides for this fee at clause B of the addendum. I find that the landlord is entitled to charge the fee. I find that the tenant has paid rent late on four occasions. The landlord is entitled to recover \$25.00 per occasion.

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 \$1,500.00 under the following terms:

Item	Amount
May NSF Fee	25.00
June Rent	\$600.00
June NSF Fee	25.00
Payment Received for Use and Occupancy (12 June 2015)	-150.00
July Rent	600.00
July NSF Fee	25.00
August Rent	600.00
August NSF Fee	25.00
Retain Security Deposit	-300.00
Recover Filing Fee	50.00
Total Monetary Order	\$1,500.00

The landlord is provided with this order 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 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 subsection 9.1(1) of the Act.

Dated: August 13, 2015

Residential Tenancy Branch

