



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to retain all or part of the tenants' security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant, a witness for the tenant, and an agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenant confirmed that he received the documentary evidence package from the landlord and that he had the opportunity to review that evidence prior to the hearing. The tenant also confirmed that he did not submit any documentary evidence in response to the landlord's application. I find the tenant was sufficiently served with the Notice of Dispute Resolution Hearing, Application for Dispute Resolution, and documentary evidence in accordance with the Act.

Preliminary and Procedural Matters

At the outset of the hearing, the parties were advised of the conduct expected during the hearing and that interruptions by either party would not be tolerated. During the hearing, the tenant was cautioned on several occasions for continuing to interrupt myself and the landlord throughout the course of the hearing.

During the hearing, the tenant's witness disconnected from the hearing before her testimony could be heard. The tenant's witness did not call back into the hearing and the hearing eventually ended after 39 minutes without hearing the testimony of the tenant's witness as a result.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that a verbal tenancy agreement began on January 8, 2009. Originally monthly rent was \$640 per month and due on the first day of each month. As of March 1, 2015, the monthly rent was increased to \$712.38 per month by way of a Notice of Rent Increase, a copy of which was submitted in evidence. A security deposit of \$320 was paid by the tenants at the start of the tenancy, which the landlord continues to hold.

The tenant originally testified that he did not receive the 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") dated July 5, 2015, although the landlord stated it was posted to the tenants' door on July 6, 2015 at 2:15 p.m. The tenant did confirm; however, that he received the 10 Day Notice through the landlord's documentary evidence, which according to the Canada Post registered mail tracking website was signed for on July 28, 2015. The tenant confirmed that he did not dispute the 10 Day Notice.

The amount owing on the 10 Day Notice was listed as \$806.90, due July 1, 2015 comprised of amounts owing from previous months and unpaid July 2015 rent. The agent testified that since filing their application, the tenants have failed to pay August 2015 rent of \$712.38.

The tenant stated that the landlord refused to accept payment from the "Ministry", which the landlord denied. The landlord stated that nobody has attempted to pay July or August; neither the tenant nor the "Ministry".

The landlord is seeking a monetary order and an order of possession.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of possession – I find the tenant has provided insufficient evidence to support his claim that the landlord failed to accept payment of July or August 2015 rent.

Therefore, I prefer the testimony of the agent that the tenants failed to pay rent for July or August 2015 and still owe \$86.90 from previous months as the rent increase was effective March 1, 2015, and according to the landlord, the rent increase since March was never paid to the landlord.

Furthermore, as the tenant confirmed that he did not dispute the 10 Day Notice, and did not pay rent as claimed on the 10 Day Notice, I find the tenants are conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which automatically corrects under the *Act* to July 19, 2015 as I accept the tenants were deemed served by June 9, 2015, and that the 10 Day Notice was posted to the door on June 6, 2015. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenants.

Claim for unpaid rent and loss of rent – As described above, I find the tenant has provided insufficient evidence to prove that the landlord failed to accept rent for the months of July and August 2015 as alleged by the tenant. The tenant did not have any evidence from an income assistance worker or other Ministry representative that the landlord refused rent from either the tenant or the Ministry. Therefore, I prefer and accept the agent's testimony that the tenants failed to pay \$86.90 owing between March, April, May and June 2015 in rent differential of \$17.38 for each of those months in relation to the rent increase which became effective as of March 1, 2015, plus \$712.38 owing for unpaid July 2015 rent and \$712.38 in loss of rent for August 2015.

Pursuant to section 26 of the *Act*, tenants must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I note that a claim for September 2015 rent is premature as rent was not due overdue until after midnight on the date of this decision, September 1, 2015.

I find the landlord has met the burden of proof and has established a monetary claim of **\$1,494.28** comprised of \$17.38 owing in the rent differential for the months of March,

April, May and June of 2015 for a total of \$69.52, plus \$712.38 owing for unpaid July 2015 rent, and \$712.38 for loss of August 2015 rent.

As the landlord has succeeded with their application, I **grant** the landlord the recovery of the filing fee in the amount of **\$50**.

The landlord is holding a security deposit of \$320 which was paid by the tenants at the start of the tenancy on January 8, 2009 and has accrued no interest since that date.

Monetary Order – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit as follows:

Loss of rent differential for months of March, April, May and June of 2015 (\$17.38 per month X 4 months)	\$69.52
Unpaid July 2015 rent	\$712.38
Loss of August 2015 rent	\$712.38
Filing fee	\$50
Subtotal	\$1,544.28
<i>(Less tenants' security deposit)</i>	<i>-\$320</i>
TOTAL AMOUNT OWING BY THE TENANTS TO THE LANDLORD	\$1,224.28

Conclusion

The landlord's application is successful.

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

The landlord has established a total monetary claim of \$1,544.28 as indicated above. I authorize the landlord to retain the tenants' full security deposit of \$320 in partial satisfaction of the landlord's monetary claim and I grant the landlord a monetary order under section 67 for the balance owing by the tenants to the landlord in the amount of \$1,224.28. This order must be served on the tenants 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: September 1, 2015

Residential Tenancy Branch

