



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRSTSERVICE RESIDENTIAL BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “*Act*”) by the landlord for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, to retain all or a portion of the tenant’s 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.

An agent for the landlord (the “agent”) attended the teleconference hearing and gave affirmed testimony. The agent was given the opportunity to ask questions about the hearing process. During the hearing the agent was given the opportunity to provide her evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), Application for Dispute Resolution (the “Application”), and documentary evidence were considered. The agent testified under oath that the tenant was served the Notice of Hearing, Application and documentary evidence by registered mail on August 13, 2015 to the tenant’s rental unit. The landlord submitted a photocopy of the registered mail receipt with tracking number. According to the Canada Post registered mail tracking website the registered mail package was successfully signed for and accepted on August 17, 2015. The agent stated that she has no information to support that the tenant has vacated the rental unit. As a result, I find the tenant was served on August 17, 2015 with the Notice of Hearing, Application and documentary evidence in accordance with the *Act* based on the above.

Preliminary and Procedural Matters

During the hearing, the agent requested to amend the landlord’s monetary claim from \$4,170 in unpaid rent, loss of rent, non-sufficient funds (“NSF”) fees, and late fees, to

also include an NSF and late fee for the loss of rent for September 2015. I note that the fees for the other months were already requested in the details of dispute and I find that based on the original details of dispute on the landlord's application, the tenant would know or ought to have known what the landlord was applying for regarding unpaid rent, loss of rent, NSF and late fees, and that such an amendment would not prejudice the tenant as a result. Accordingly, I permit the amendment of the landlord's monetary claim pursuant to section 64(3) of the *Act* from \$4,170 to \$4,230 and note that the amount is not significantly more than the original monetary claim. I note the landlord has also requested recovery of the \$50 filing fee cost paid to file the Application.

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?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to recover the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on May 23, 2015 and was scheduled to expire on May 31, 2016. Monthly rent in the amount of \$1,350 was due on the first day of each month. The agent testified that the tenant paid a \$675 security deposit at the start of the tenancy, which the landlord continues to hold.

The agent testified that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, (the "10 Day Notice") dated July 10, 2015 was posted to the tenant's door on July 10, 2015 at 5:12 p.m. Pursuant to section 90 of the *Act*, the tenant is deemed served three days later on July 13, 2015. A copy of the 10 Day Notice was submitted in evidence. The effective vacancy date is listed as July 20, 2015 and indicates that \$1,385 was owed as of July 1, 2015, which the agent stated was comprised of \$1,350 in unpaid rent plus \$35 for the NSF fee charged by the bank when the tenant's NSF cheque was returned due to non-sufficient funds.

The agent stated that the tenant continues to occupy the rental unit to her knowledge and that the tenant did not dispute the 10 Day Notice or pay the amount owing as described in the 10 Day Notice. The agent stated that the tenant has not paid rent for

August or September of 2015, and owes NSF and late fees for both of those months also.

The agent referred to section 3 of the tenancy agreement regarding late payments of rent which indicates that late payments of rent are subject to a fee of \$25 and was signed by the tenant on May 19, 2015.

The agent testified that the landlord is seeking \$4,230 as follows:

1. Unpaid rent for July 2015	\$1,350
2. Late fee for July 2015	\$25
3. NSF fee for July 2015	\$35
4. Loss of rent for August 2015	\$1,350
5. Late fee for August 2015	\$25
6. NSF fee for August 2015	\$35
7. Loss of rent for September 2015	\$1,350
8. Late fee for September 2015	\$25
9. NSF fee for September 2015	\$35
TOTAL	\$4,230

A copy of the tenant's account ledger was submitted in evidence.

Analysis

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

Order of Possession – I accept the undisputed testimony of the agent that the tenant has failed to pay rent as described above. As the tenant did not dispute the 10 Day Notice dated July 10, 2015 or pay the full amount of rent as listed on the 10 Day Notice within five days of being deemed served with the 10 Day Notice on July 13, 2015, I find the tenant is 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 corrects automatically under section 53 of the *Act* to July 23, 2015. Accordingly, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I find the tenancy ended on the corrected effective vacancy date of July 23, 2015.

Claim for unpaid rent, loss of rent, late fees and NSF fees – Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy

agreement. Further to my findings above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. The tenant continues to occupy the unit according to the agent who indicated that she has no evidence to prove to the contrary. The landlord will not regain possession of the unit until after service of the order of possession. Given the above, I find the landlord has met the burden of proof by establishing that the tenant has failed to pay July 2015 rent of \$1,350 and that the landlord has suffered a loss of rent of \$1,350 for the months of August and September 2015 inclusive given that the tenant continues to overhold the rental unit even though the tenancy ended on July 23, 2015. I do not grant late fees for the months of August and September 2015 as the tenancy ended on July 23, 2015; however, I do grant the late fee of \$25 for the month of July 2015, when the tenancy was still in effect. I also grant the recovery of the \$35 NSF fees for the months of July, August and September of 2015, as those amounts were charged by the bank against the tenant's cheques returned to the landlord as non-sufficient funds.

Based on the above, I grant the landlord a total of **\$4,180** comprised of \$1,350 for unpaid July 2015 rent, \$1,350 for loss of August 2015 rent, \$1,350 for loss of September 2015 rent, a \$25 late fee for July 2015, and \$35 NSF fees for each of the months of July, August and September of 2015. I note that the landlord's claim was supported by the ledger submitted in evidence.

As the landlord's application has merit, I grant the landlord the recovery of the **\$50** filing fee.

I find the landlord has met the burden of proof and I find the landlord has established a total monetary claim of **\$4,230** comprised of \$4,180 in unpaid rent, loss of rent, late and NSF fees, plus recovery of the \$50 filing fee.

The tenant's security deposit of \$675 has accrued no interest since the start of the tenancy, which the landlord continues to hold.

I ORDER the landlord to retain the tenant's full security deposit of \$675 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 **\$3,555**.

Conclusion

The landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. The tenancy ended on July 23, 2015.

The landlord has been ordered to retain the tenant's full security deposit of \$675 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 \$3,555. 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: September 15, 2015

Residential Tenancy Branch

