



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TOP VISION REALTY INC.
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 keep all or part of the security deposit, and to recover the cost of the filing fee.

An agent for the landlord (the “agent”) attended the teleconference hearing. 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 mailed a registered mail package with the Notice of Hearing, Application and documentary evidence on August 21, 2015 and that the package was addressed to the rental unit address. The agent stated that the tenant was still occupying the rental unit as of that date the registered mail package was mailed. The agent provided a registered mail tracking number in evidence and stated that the registered mail package was returned as “unclaimed” when the package was returned to the landlord on September 11, 2015. This information is supported by the online registered mail tracking information. As a result, and in accordance with section 90 of the *Act*, the tenant is deemed served five days after the registered mail package was mailed. Therefore, in the matter before me, the tenant was deemed served under the *Act* as of August 26, 2015.

During the hearing the agent was given the opportunity to ask questions about the hearing process and to provide her evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the matters before me.

Preliminary and Procedural Matters

During the hearing, the agent requested to withdraw the landlord's request for loss of October 2015 rent as the landlord deemed the tenant to have abandoned the rental unit as of September 16, 2015. The agent's request was permitted as it does not prejudice the tenant. Given the above, the landlord's monetary claim was reduced to \$1,498.75 comprised of \$166.25 owing for July 2015 rent, plus \$666.25 owing for August and September 2015 rent.

The agent stated that the landlord was still requesting an order of possession in case the tenant returned to the rental unit. As a result, I will consider that portion of the landlord's 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 the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The agent testified although she was unaware when the tenancy started as the landlord lost a copy of the tenancy agreement, the original rent was \$650 per month and of the date of the hearing, the current monthly rent was \$666.25 due on the first day of each month. The agent also stated that the tenant likely provided a security deposit of \$325, which is half the original amount of rent, and that the landlord is claiming towards the security deposit.

The agent testified that the 10 Day Notice for Unpaid Rent or Utilities, (the "10 Day Notice") dated August 6, 2015 was posted to the tenant's door on August 6, 2015 at 5:30 p.m. and that the tenant was residing in the rental unit as of that date. The agent stated that the tenant did not dispute the 10 Day Notice or pay the \$666.25 listed as due August 1, 2015. The agent stated that the tenant also owed \$166.25 for July rent, and did not pay any rent for September 2015 since the landlord filed their application. The effective vacancy date listed on the 10 Day Notice is August 20, 2015.

The landlord is seeking an order of possession in case the tenant returns to the rental unit.

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 agent's undisputed testimony that the tenant was residing in the rental unit when the 10 Day Notice dated August 6, 2015 was posted to the tenant's door. By serving the 10 Day Notice on the tenant's door on August 6, 2015, the tenant is deemed served pursuant to section 90 of the *Act* three days later on August 9, 2015. Furthermore, as the tenant did not dispute the 10 Day Notice or pay the amount owing as indicated on the 10 Day Notice, I find the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective date of the 10 Day Notice, which was August 20, 2015. Accordingly, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I note that although the landlord deemed the tenant to have abandoned the rental unit as of September 16, 2015, the landlord requested an order of possession in case the tenant returned to the rental unit.

Claim for unpaid rent – I accept the landlord's undisputed testimony that the tenant occupied the rental unit into September 2015 and failed to pay rent as claimed, comprised of \$166.25 owing for July 2015 rent, plus \$666.25 for each of the months of August and September of 2015. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the 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. I find the landlord has met the burden of proof and I find the landlord has established a monetary claim of **\$1,498.75** in unpaid rent as described above.

As the landlord has succeeded with their application, I grant the landlord the recovery of the **\$50** filing fee, resulting in a total monetary claim of **\$1,548.75**.

The landlord continues to hold the tenant's security deposit of \$325.

I ORDER the landlord to retain the tenant's full security deposit of \$325 in partial satisfaction of the landlord's monetary claim. This results in a balance owing by the tenant to the landlord in the amount of **\$1,223.75**.

Monetary Order – I grant the landlord a monetary order pursuant to section 67 of the *Act* in the net amount of **\$1,223.75** comprised \$1,498.75 in unpaid rent, plus the recovery of the \$50 filing fee, less the \$325 security deposit that the landlord has been ordered to retain in partial satisfaction of the landlord's total monetary claim.

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. Should the landlord require enforcement of the order of possession, the tenant must first be served and the order of possession may then be enforced in the Supreme Court of British Columbia.

The landlord has been granted a monetary order under section 67 in the net amount of \$1,223.75. 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: October 5, 2015

Residential Tenancy Branch

