



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC QUORUM PROPERTIES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 11 minutes. The landlord's agent, JE ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that he was the resident manager for this rental building and that he had authority to represent the landlord company named in this application, as an agent at this hearing.

The landlord testified that the tenants were each served with a separate copy of the landlord's application for dispute resolution hearing package ("Application") on July 29, 2015, by way of registered mail. The landlord provided copies of Canada Post receipts and tracking numbers with its Application. In accordance with sections 89 and 90 of the Act, I find that the tenants were deemed served with the landlord's Application on August 3, 2015, five days after their registered mailings.

The landlord testified that the tenants were served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 15, 2015 ("10 Day Notice"), by way of posting it to the tenants' rental unit door on the same date. In accordance with

sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on July 18, 2015, three days after its posting.

At the outset of the hearing, the landlord requested an amendment to increase the monetary claim sought for unpaid rent. The landlord stated that because the landlord's Application was filed in July 2015, he could not include the unpaid rent for August and September 2015, totalling \$1,660.00, because these amounts were not yet due at that time. The landlord initially made an Application for unpaid rent and indicated the "current" amount owing at that time. Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to increase the landlord's monetary claim to include August and September 2015 rent, totalling \$1,660.00. The tenants are aware that their rent is due on the first day of each month as per their tenancy agreement. The tenants continued to reside in the rental unit, despite the fact that the 10 Day Notice required them to vacate the rental unit by July 28, 2015, for failure to pay the full rent due. Therefore, the tenants knew or should have known that by failing to pay their rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenants had appropriate notice of the landlord's claim for increased rent, despite the fact that they did not attend this hearing.

Issues 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?

Is the landlord entitled to retain the tenants' security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this Application from the tenants?

Background and Evidence

The landlord testified that this tenancy began on July 16, 2013 and ended on October 2, 2015. Monthly rent in the amount of \$830.00 was payable on the first day of each month. A security deposit of \$415.00 was paid by the tenants and the landlord continues to retain this deposit. The landlord testified that the tenants vacated the rental unit and returned the keys to the landlord on October 2, 2015. The landlord provided a copy of the written tenancy agreement for this hearing.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$1,130.00 was due on July 1, 2015. The notice indicates an effective move-out date of July 28, 2015. The landlord stated that he spoke with the tenants by way of text messages on

September 1, September 17 and October 1, 2015, regarding the fact that they needed to vacate and return the keys to the rental unit.

The landlord seeks a monetary order of \$2,375.00 for unpaid rent. The landlord provided a rent ledger with its Application to show the rent payments during this tenancy. The landlord indicated that rent of \$300.00 is unpaid from December 2014 until June 2015. The landlord stated that rent of \$415.00 was unpaid for July 2015, as the tenants only made a partial payment of \$415.00 on July 3, 2015 towards the total rent of \$830.00. The landlord provided a receipt, dated July 15, 2015, issued to the tenants, indicating that the tenants' partial payment of July 2015 rent was being accepted for "use and occupancy only and does not constitute a renewal or continuance of the tenancy." The landlord indicated that rent of \$830.00 is also unpaid for each of August and September 2015, as the tenants did not make any payments towards rent. The landlord stated that he was not pursuing any loss of rent for October 2015. The landlord also seeks to recover the \$50.00 filing fee paid for this Application.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the full rent due on July 1, 2015, within five days of being deemed to have received the 10 Day Notice. The tenants have not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of these actions within five days led to the end of this tenancy on July 28, 2015, the effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by July 28, 2015. However, the tenants vacate the rental unit on October 2, 2015.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenants failed to pay rent totalling \$2,375.00 from December 2014 to September 2015. Therefore, I find that the landlord is entitled to \$2,375.00 in rental arrears for the above period.

The landlord continues to hold the tenants' security deposit of \$415.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the

tenants' security deposit of \$415.00 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 the Application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$2,010.00 against the tenants as follows:

Item	Amount
Unpaid Rent between December 2014 and June 2015	\$300.00
Unpaid July 2015 Rent	415.00
Unpaid August 2015 Rent	830.00
Unpaid September 2015 Rent	830.00
Less Security Deposit	-415.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Award	\$2,010.00

The landlord is provided with a monetary order in the amount of \$2,010.00 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's Application for an order of possession for unpaid rent is withdrawn.

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: October 08, 2015

Residential Tenancy Branch