



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
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* (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; 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 1112 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. The 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's evidence was provided by the agent and the witness.

The agent testified that the landlord served the tenant with the dispute resolution package on 20 November 2015 by registered mail. The agent testified that she viewed the tracking information for this mailing and confirmed that it was delivered 25 November 2015. The agent provided me with a Canada Post tracking number for the mailing. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

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 arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the witnesses, 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 January 2011. The parties entered into a written tenancy agreement on 15 December 2010. Monthly rent is geared to income and is due on the first. Most recently, monthly rent was determined to be \$505.00. The landlord continues to hold the tenant's security deposit in the amount of \$415.00 which was collected at the beginning of the tenancy.

On 9 November 2015, the landlord issued the 10 Day Notice to the tenant. The witness testified that he posted the 10 Day Notice to the tenant's door at 1330 on 9 November 2015. The 10 Day Notice was dated 9 November 2015 and set out an effective date of 19 November 2015. The 10 Day Notice set out that the tenant failed to pay \$505.00 in rent that was due on 1 November 2015.

On 30 November 2015, the tenant paid \$1,000.00 towards her rent. 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 received a cheque for January's rent that was returned for insufficient funds.

The agent testified that she spoke to the tenant by telephone and confirmed that the 10 Day Notice would be cancelled if she paid her rent arrears within the timeframe provided under the Act. The agent testified that she is not aware of any reason that would entitle the tenant to deduct any amount from rent.

The landlord claims for rental arrears totaling \$515.00:

Item	Amount
November Rent	\$505.00
Payment Received for Use and Occupancy (30 November 2015)	-1,000.00
December Rent	505.00
January Rent	505.00
Total Monetary Order Sought	\$515.00

The agent asked that in the event I grant an order of possession it be dated at the end of January.

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 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 22 November 2015, the corrected effective date of the 10 Day Notice. As that has not occurred, I find that the landlord is entitled to an order of possession.

The landlord has provided sworn and uncontested evidence that the tenant has unpaid rental arrears totaling \$515.00. 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.

The agent testified that the landlord continued to hold the tenant's \$415.00 security deposit, plus interest, paid at the beginning of the tenancy. Over that period, no interest is payable. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

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

The landlord is provided with a formal copy of an order of possession effective 31 January 2016. 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.

I issue a monetary order in the landlord's favour in the amount of \$150.00 under the following terms:

Item	Amount
Unpaid Rent	\$515.00
Offset Security Deposit Amount	-415.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$150.00

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.

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: January 18, 2016

Residential Tenancy Branch

