



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNSD, FF

Introduction

This hearing dealt with the landlords' 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 and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's 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 tenant, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 13 minutes. The landlord AG ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she had authority to represent "landlord BG," the other landlord named in this application, as an agent at this hearing.

The landlord testified that the tenant was served with the landlords' application for dispute resolution hearing package ("Application") on January 19, 2016 by way of registered mail. The landlords provided a Canada Post receipt and tracking number with their Application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' Application on January 24, 2016, five days after its registered mailing.

The landlord testified that the tenant was personally served by landlord BG with the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 1, 2015 ("10 Day Notice"), on the same date. The landlord testified that she witnessed this service by landlord BG. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the landlord's 10 Day Notice on December 1, 2015. The

landlord faxed in a copy of the signed 10 Day Notice after the hearing at my request, indicating that she inadvertently submitted a copy of the notice before it was signed for this hearing. The landlord confirmed that only the signed copy was served upon the tenant. I received and reviewed the signed 10 Day Notice prior to making my decision.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' Application to increase the landlords' monetary claim from \$2,500.00 to \$3,750.00 to include all unpaid rent to date, including for January, February and March 2016. The tenant is aware that rent is due on the 15th day of each month as per her tenancy agreement. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required her to vacate earlier, for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay her rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlords' claims for increased rent, despite the fact that she 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 and for damage to the rental unit?

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

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

Background and Evidence

The landlord testified that this month-to-month tenancy began on September 1, 2015 and that monthly rent in the amount of \$750.00 is payable on the 15th day of each month. The landlord stated that a security deposit of \$750.00 was paid by the tenant and the landlords continue to retain this deposit. During the hearing, I advised the landlord that the security deposit collected from the tenant was more than half a month's rent, contrary to section 19 of the *Act*. The landlord confirmed that the tenant continues to reside in the rental unit. The landlord explained that no written tenancy agreement governs this tenancy, as it was only a verbal agreement.

The landlords issued the 10 Day Notice for unpaid rent of \$1,500.00 due on November 15, 2015. The notice indicates an effective move-out date of December 15, 2015. The

landlords seek a monetary order of \$3,750.00 total for unpaid rent from October 2015 to March 2016 inclusive. The landlord stated that she was not seeking any rent amount for March 2016, only five months of rent at \$750.00 per month from October 2015 to February 2016. The landlord claimed that the tenant did not pay any rent for the above months. The landlords are also seeking to recover the \$100.00 filing fee for their Application from the tenant.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on November 15, 2015, within five days of receiving the 10 Day Notice. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on December 15, 2015, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by December 15, 2015. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlords' signed copy of the 10 Day Notice is valid and complies with section 52 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords 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 tenant failed to pay rent totalling \$3,750.00 from October 2015 to March 2016. Therefore, I find that the landlords are entitled to \$3,750.00 in rental arrears for the above period.

As the landlords were mainly successful in this Application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for their Application.

The landlords continue to hold the tenant's security deposit of \$750.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenant's security deposit of \$750.00 in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I grant an Order of Possession to the landlords effective **two (2) days after service of this Order** on the tenant. Should the tenant or anyone on the premises 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 landlords' favour in the amount of \$3,100.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant 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 landlords' application for a monetary order for damage to the rental unit is dismissed with leave to reapply. The landlord did not provide any evidence about this claim at this hearing.

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: March 02, 2016

Residential Tenancy Branch

