



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid and/or loss of rent; and, authorization to retain the security deposit and pet damage deposit in partial satisfaction of the unpaid rent. The tenant did not appear at the hearing. The landlord provided a registered mail receipt, including tracking number, as proof the hearing documents were sent to the tenant at the rental unit address on February 7, 2016. The landlord's agent confirmed that the tenant continues to occupy the rental unit and that the registered mail was returned as unclaimed despite two notice cards left by Canada Post. I was satisfied that the landlord served the tenant with notification of this proceeding in a manner that complies with the Act and, pursuant to section 90 of the Act, the tenant is deemed to have received the hearing documents five days after mailing. Therefore, I proceeded to hear from the landlord without the tenant present.

The landlord's agent pointed out that the Application included a typographical error in the request for a Monetary Order. In the details of dispute the landlord provided a detailed calculation of the claim for unpaid and loss of rent in the total amount of \$11,750.00; however, in the box that corresponds to Monetary Order a "0" was omitted in error and the amount in the box reads \$1,175.00. I was satisfied that upon reading the application in it's entirety that it is clear that the landlord is seeking to recover unpaid and loss of rent in the sum of \$11,750.00 and I amended the application to correct the typographical error.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent and loss of rent as claimed?
3. Is the landlord authorized to retain the security deposit and pet damage deposit in partial satisfaction of the unpaid rent?

Background and Evidence

The one year fixed term tenancy commenced on July 1, 2014 and converted to a month to month tenancy after the fixed term expired. The tenant paid a security deposit of \$675.00 and a pet damage deposit of \$675.00. The tenant is required to pay rent of \$1,350.00 on the first day of every month.

The tenant failed to pay rent from July 2015 onwards. The landlord's agent personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on January 21, 2016 indicating the tenant failed to pay rent of \$9,450.00 as of January 1, 2016. The Notice has a stated effective date of January 21, 2016. The tenant presented payment of \$400.00 to the landlord on January 22, 2016 for which a receipt was issued for "use and occupancy only". The tenant made no other payment since then; did not file to dispute the Notice; and, has not returned possession of the unit to the landlord.

The landlord seeks an Order of Possession effective two days after service upon the tenant. After taking into account the \$400.00 payment made on January 22, 2016 the landlord seeks to recover unpaid rent and loss of rent from July 2015 through March 2016 in the sum of \$11,750.00.

Documentary evidence provided by the landlord included copies of: the tenancy agreement; the 10 Day Notice; Proof of Service for the 10 Day Notice; the registered mail receipt; and, a letter authorizing the landlord's agent to act on the owner's behalf.

Analysis

Under section 26 of the Act a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the evidence before me that the landlord's agent personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on January 21, 2016. Accordingly, the effective date of the Notice must be no earlier than January 31, 2016. The Notice before me has an incorrect effective date; however, an incorrect effective date does not invalidate a Notice to End Tenancy. Rather, the effective date automatically changes to comply with the Act. Accordingly, the effective date of the Notice automatically changes to read January 31, 2016 pursuant to sections 46 and 53 of the Act.

Since the tenant did not pay all of the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on January 31, 2016 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Based upon the undisputed evidence before me, I find the landlord entitled to recover unpaid rent for the months of July 2015 through January 2016 plus loss of rent for the months of February 2016 and March 2016 since the tenant remained in possession of the rental unit. Taking into account the \$400.00 payment received on January 22, 2016 I accept the landlord's calculations to be correct and I find that the tenant owes unpaid and loss of rent in the sum of \$11,750.00.

I authorize the landlord to retain the tenant's security deposit and pet damage deposit in partial satisfaction of the rent owed to the landlord. I also award the landlord recovery of the \$100.00 filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid and loss of rent: July 2015 – March 2016	\$11,750.00
Filing fee	100.00
Less: security deposit	(675.00)
Less: pet damage deposit	<u>(675.00)</u>
Monetary Order	\$10,500.00

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to retain the tenant's security deposit and pet damage deposit and has been provided a Monetary Order for the balance of \$10,500.00 to serve and enforce upon the tenant.

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 17, 2016

Residential Tenancy Branch