



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRIUMPH MANAGEMENT
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 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, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 10 minutes. The landlord's agent, GM ("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 he was the vice president of mergers and acquisitions for the landlord company named in this application and that he had authority to speak on its behalf as an agent at this hearing.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on March 21, 2016, by way of registered mail. The landlord provided a Canada Post receipt and tracking number with the Application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Application on March 26, 2016, five days after its registered mailing.

The landlord provided two notices of rent increase to me after the hearing, by way of facsimile, as I requested them since he did not provide it with the landlord's Application. I received and considered these notices in my decision, as I find no prejudice to the tenant in doing so, as the tenant received these notices and paid the increased rent according to the notices.

The landlord said that he witnessed the tenant being personally served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 5, 2016 ("10 Day Notice"), on the same date. 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 February 5, 2016.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to increase the landlord's monetary claim to increase it from \$850.00 to \$2,550.00 to include March and April 2016 rent. The tenant is aware that rent is due on the first day of each month, as per his tenancy agreement. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required him to vacate for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay his 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 landlord's claims for increased rent, despite the fact that he 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 tenant's security deposit in partial satisfaction of the monetary order 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 June 1, 2014. Monthly rent in the current amount of \$850.00 is payable on the first day of each month. The landlord confirmed that notices of rent increase were issued to the tenant to raise the rent from the original tenancy agreement amount of \$825.00. A security deposit of \$412.50 was paid by the tenant and the landlord continues to retain this deposit. The landlord testified that the tenant continues to reside in the rental unit. The landlord provided a copy of the written tenancy agreement.

The landlord issued a 10 Day Notice for unpaid rent of \$850.00 due on February 1, 2016. The notice indicates an effective move-out date of February 15, 2016. The landlord said that the tenant has not paid rent for February, March or April 2016. The

landlord seeks a monetary order of \$2,550.00 for the above period. The landlord also seeks to recover the \$100.00 filing fee for this 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 February 1, 2016, within five days of receiving the 10 Day Notice. The tenant has not made 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 the above actions within five days led to the end of this tenancy on February 15, 2016, 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 February 15, 2016. As this has not occurred, I find that the landlord is entitled to a two (2) Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or 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 tenant failed to pay rent of \$850.00 for each month from February to April 2016, inclusive. I find that the landlord's two notices of rent increase established that the rent is currently \$850.00 per month, as the amounts are within the *Residential Tenancy Regulation* allowable amounts and the proper notice periods were given to the tenant. Therefore, I find that the landlord is entitled to \$2,550.00 in rental arrears for the above period.

The landlord continues to hold the tenant's security deposit of \$412.50. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the deposit of \$412.50 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 \$100.00 filing fee paid for the Application.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service 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 landlord's favour in the amount of \$2,237.50 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.

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: April 28, 2016

Residential Tenancy Branch