



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TYCON PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, 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;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on June 17, 2016. The tenant confirmed receipt of the package in this manner. The tenant submitted late documentary evidence by personally serving it to the landlord on July 18, 2016. The landlord confirmed receipt of the tenant's documentary evidence and stated that there were no issues in proceeding with the hearing with the tenant's late evidence. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 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 order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security and pet damage deposits?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties agreed that this tenancy began on October 15, 2015 on a fixed term tenancy ending on October 31, 2016 as per a signed tenancy agreement dated October 9, 2015. Both parties agreed that the monthly rent was \$1,300.00 payable on the 1st day of each month and a security deposit of \$650.00 and a pet damage deposit of \$650.00 were paid.

Both parties agreed that the landlord served the tenant with the 10 Day Notice for Unpaid Rent (the 10 Day Notice) dated May 12, 2016 in person on May 12, 2016. The 10 Day Notice states that the tenant failed to pay rent of \$1,300.00 that was due on May 1, 2016. The 10 Day Notice also sets out an effective end of tenancy date of May 25, 2016.

The landlord's agent (the landlord) seeks an order of possession and a monetary order for \$3,110.00 which consists of:

\$510.00	May 2016 Rental Arrears
\$1,300.00	June 2016 Unpaid Rent
\$1,300.00	July 2016 Unpaid Rent

The landlord clarified that after the 10 Day Notice dated May 12, 2016 was served to the tenant, a payment was received from the tenant of \$790.00 in cash, leaving arrears of \$510.00 for May 2016. The landlord also stated that as of the date of this hearing, no rent has been paid for June and July.

The tenant confirmed in his direct testimony that no rent has been paid except for the \$790.00 cash payment as of the date of this hearing. The tenant stated that an agreement was made with the landlord for services (construction/repairs) in lieu of rent payments. The tenant stated that he was owed \$5,500.00 in services from the landlord for repairs to a deck. The tenant stated in the past that an agreement was made with the landlord for services in lieu of rent payments for him to repair the roof and that subsequent to that an agreement was made with the landlord for services in lieu of rent payments.

The tenant provided testimony stating, "I didn't pay the rent because I did work" and "I assumed any work will come straight off the rent."

The tenant also relies in support of his claim of an agreement being made with the landlord a letter from S.S. dated July 18, 2016 which states that he "I was present while S. (the tenant) and W. (the landlord) were discussing the deck. And stairs, I overheard W. tell S. that F. (the landlord) would pay or take it off the rent. their conversation was brief W. was only here for about 5 min."

The landlord disputes that no agreement was made for the \$5,500.00 claimed by the tenant or that there was an ongoing agreement for services in lieu of rent. The landlord stated that the only record for services in lieu of payment of rent was for roof repairs. The landlord stated that any work authorized by the landlord would require some sort of documented estimate for the work before an approval was made.

The landlord disputed the tenant's written evidence with S.S. that no agreement was made.

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.

Both parties have confirmed that the landlord served the tenant with the 10 Day Notice dated May 12, 2016 in person on May 12, 2016. As such, I find based upon the undisputed affirmed evidence of both parties that the tenant was properly served as per section 88 of the Act. The tenant is deemed to have received it 5 days later as per section 90 of the Act.

Both parties have provided undisputed affirmed evidence that the tenant failed to pay rent which consists of:

\$510.00	May 2016 Rental Arrears
\$1,300.00	June 2016 Unpaid Rent
\$1,300.00	July 2016 Unpaid Rent

The tenant has claimed that an agreement for services in lieu of rent of \$5,500.00 for deck repairs was made with the landlord. The landlord has disputed this claim stating

that no such agreement was made. Both parties have agreed that a previous agreement was made for the tenant to repair the roof in lieu of rent.

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The onus or burden of proof lies with the party who is making the claim. In this case it is the tenant who has claimed that an agreement was made for services in lieu of rent. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. Both parties have provided conflicting evidence that an agreement was made between the two parties for services in lieu of rent. On this basis, I find that the tenant has failed to provide sufficient evidence to satisfy me that he was entitled to deduct amounts for services in lieu of rent as a result of an agreement made with the landlord. As such, I find that the tenant has failed to provide sufficient evidence that he had a right to deduct rent for services.

As the tenant has failed to pay his rent in full when due, I find that the 10 Day Notice issued May 12, 2016 is valid. The landlord's application for an order of possession and a monetary order for unpaid rent is granted. The landlord is entitled to possession of the rental unit on May 25, 2016, the effective date of the 10 Day Notice. As this date has now passed, the landlord is entitled to an order of possession effective two days after it is served upon the tenant(s).

The tenant admitted that he has not paid rent as claimed by the landlord. I find that the landlord is entitled to the amount claimed of \$3,110.00.

The landlord applied to keep the tenant's security deposit and pet damage deposits. I allow the landlord to retain the combined \$1,300.00 security and pet damage deposits 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 this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,735.00 under the following terms:

Item	Amount
May 2016 Rental Arrears	\$510.00
Unpaid June 2016 Rent	1,300.00
Unpaid July 2016 Rent	1,300.00
Offset Security/Pet Deposits	-1,300.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$1,910.00

The landlord is provided with these orders 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 these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

The landlord is provided with a formal copy of an order of possession. 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.

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: July 21, 2016

Residential Tenancy Branch