



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EQUITABLE REAL ESTATE INVESTMENT CORPORATION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPC, MNR, MNDC, MNSD, FF; MT, CNC, CNR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent and for cause, pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, 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.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause, dated June 22, 2016 ("1 Month Notice"), pursuant to section 66;
- cancellation of the landlord's 1 Month Notice, pursuant to section 47; and
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 6, 2016 ("1 Month Notice"), pursuant to section 46.

The tenant did not attend this hearing, which lasted approximately 22 minutes. The landlord's agent PB ("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 is the resident administrator for the landlord company named in this application and that she had authority to speak on its behalf as an agent at this hearing.

The landlord confirmed that the tenant was served with the landlord's application for dispute resolution hearing package on July 22, 2016 and further written evidence on

August 12, 2016, by way of registered mail. The landlord provided two Canada Post receipts and tracking numbers with its Application. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Application on July 27, 2016 and the additional written evidence package on August 17, 2016, five days after their registered mailings.

The landlord testified that the tenant was served with the landlord's 10 Day Notice on July 6, 2016, by way of posting to the rental unit door. The landlord provided a signed, witnessed proof of service with its Application. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on July 9, 2016, three days after its posting.

Preliminary Issue – Amendment to Landlord's Application

At the outset of the hearing, the landlord confirmed that she wanted to withdraw the landlord's application for an order of possession for cause. Accordingly, this portion of the landlord's application is withdrawn.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to increase the landlord's monetary claim to include August 2016 unpaid rent and late fees. The tenant is aware that rent and late fees are due each month as per her written 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. The landlord provided an amended increased monetary order worksheet including August 2016 unpaid rent and late fees, which was served to the tenant prior to the hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claims for increased rent and late fees, despite the fact that she did not attend this hearing.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the Residential Tenancy Branch *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

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 money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

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 its Application?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on April 1, 2016. Monthly rent in the amount of \$1,100.00 is payable on the first day of each month. A security deposit of \$550.00 was paid by the tenant and the landlord continues to retain this deposit. Both parties signed a written tenancy agreement and a copy was provided for this hearing.

The landlord issued the 10 Day Notice for unpaid rent of \$1,100.00 due on July 1, 2016. The notice indicates an effective move-out date of July 6, 2016.

The landlord seeks a monetary order of \$2,349.00 plus the \$100.00 filing fee. The landlord seeks \$2,200.00 for unpaid rent for July and August 2016, \$50.00 for late fees for July and August 2016, and \$99.00 for laundry fees from April to July 2016.

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 July 1, 2016, within five days of being deemed to have received the 10 Day Notice. The tenant made an application to dispute the notice, pursuant to section 46(4) of the *Act*. The tenant filed her application on July 14, 2016, within five days of being deemed to have received the 10 Day Notice; however, she did not appear at this hearing to present her submissions. In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent, led to the end of this tenancy on July 19, 2016, the corrected effective date on the 10 Day Notice. In

this case, this required the tenant and anyone on the premises to vacate the premises by July 19, 2016. As this has not occurred, I find that the landlord is entitled to a two (2) day 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 26 of the *Act* requires the tenant to pay rent on the date indicated on the tenancy agreement, which is the first day of each month in this case. 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 \$1,100.00 for each month from July to August 2016, totalling \$2,200.00. Therefore, I find that the landlord is entitled to \$2,200.00 in rental arrears from the tenant.

I find that the landlord is entitled to \$50.00 total in late fees for July and August 2016 for failing to pay rent when it is due. The landlord provided for this \$25.00 monthly fee in clause 10 of the tenancy agreement, as required by sections 7(1)(d) and (2) of the *Regulation*.

The landlord provided undisputed evidence that the tenant failed to pay laundry fees of \$99.00 total, that is due as per a written laundry fee agreement that she signed. The landlord said that laundry washer and dryer charges are added to a FOB provided by the landlord and the laundry bills are then provided to the tenant for reimbursement. The landlord provided copies of two bills from the tenant's two laundry FOBS used, for \$31.50 and \$67.50, totalling \$99.00. Therefore, I find that the landlord is entitled to \$99.00 in laundry fees from the tenant.

As the landlord was successful in its Application, I find that it is entitled to recover the \$100.00 filing fee from the tenant.

The landlord continues to hold the tenant's security deposit of \$550.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's entire security deposit of \$550.00, in partial satisfaction of the monetary award.

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 order the landlord to retain the tenant's entire security deposit of \$550.00, in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$1,899.00 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 landlord's application for an order of possession for cause is withdrawn.

The tenant's entire application is dismissed without leave to reapply.

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: August 26, 2016

Residential Tenancy Branch