



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER NATIVE HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPN, MNR, MNDC, 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 and based on the tenant's notice to end tenancy, 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 .

The tenant did not attend this hearing, which lasted approximately 46 minutes. The individual landlord AP ("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 was the property manager for the "landlord company" named in this application and that she had authority to represent it as an agent at this hearing.

The landlord testified that the tenant was served with the landlords' application for dispute resolution hearing package on August 16, 2016, by way of registered mail. The landlord provided a Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' application on August 21, 2016, five days after its registered mailing.

The landlord testified that the tenant was served with the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 3, 2016 ("10 Day Notice"), on

the same date, by way of posting to the rental unit door. The landlords provided a signed, witness proof of service with their application. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' 10 Day Notice on August 6, 2016, three days after its posting.

Preliminary Issue - Amendments to Landlords' Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' application to add the landlord company as an applicant-landlord party, as per the landlord's request. The landlord confirmed that the landlord company was the true landlord for this tenancy and signed the tenancy agreement with the tenant. The landlord stated that she was just the agent for the landlord company.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' Application to increase the landlord's monetary claim to include September and October 2016 rent. The tenant is aware that rent is due on the first day of each month. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required her to vacate 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.

At the outset of the hearing, the landlord confirmed that she applied for an order of possession based on a tenant's notice to end tenancy, in error. Accordingly, this portion of the landlords' application is dismissed without leave to reapply.

Issues to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords 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?

Are the landlords entitled to retain the tenant's security deposit in partial satisfaction of the monetary order requested?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began on February 1, 2011. Monthly rent in the current amount of \$419.00 is payable on the first day of each month. The landlord said that the rent changes every year based on the tenant's application for rent subsidy and provided a copy of the latest rental subsidy application and the latest letter about the current rent amount. The landlord confirmed that rent of \$405.00 was due effective June 1, 2014, rent of \$414.00 was due effective June 1, 2015 and rent of \$419.00 was due effective July 1, 2016. A security deposit of \$294.00 was paid by the tenant and the landlords continue to retain this deposit. The tenant continues to reside in the rental unit. A written tenancy agreement was signed by the tenant and a copy was provided for this hearing.

The landlords issued the 10 Day Notice, indicating an effective move-out date of August 16, 2016. The notice states that the tenant failed to pay rent of \$1,341.00 on August 1, 2016.

The landlord said that the tenant failed to pay a total of \$2,179.00 in rent for this tenancy as per the following breakdown:

- \$4.00 for each month from December 2014 to May 2015 ($\$4.00 \times 6 \text{ months} = \24.00);
- \$13.00 for each month from June to August 2015 and December 2015 to January 2016 ($\$13.00 \times 5 \text{ months} = \65.00);
- \$414.00 for each month in March and June 2016 ($\$414.00 \times 2 \text{ months} = \828.00);
- \$5.00 for July 2016; and
- \$419.00 for each month from August to October 2016 ($\$419.00 \times 3 \text{ months} = \$1,257.00$).

The landlords seek a monetary order of \$2,179.00 for the above period from December 2014 to October 2016 as well as recovery of the \$100.00 filing fee.

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 August 1, 2016, within five days of being deemed to have received the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received 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 August 16, 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 August 16, 2016. As this

has not occurred, I find that the landlords are entitled to a ten (10) day Order of Possession, pursuant to section 55 of the *Act*. During the hearing, the landlord requested a ten-day order of possession in order to allow the elderly tenant enough time to move from the rental unit. I find that the landlords' 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 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 landlords provided undisputed evidence that the tenant failed to pay rent of \$2,179.00 total from December 2014 to October 2016. I find that the landlords are entitled to the entire month of rent for October 2016, despite the fact that this hearing was held on October 7, 2016, because rent is due on October 1, 2016, as per the tenancy agreement. Further the landlord may be required to serve the tenant with the order of possession and possibly enforce it, enter the rental unit to inspect, potentially repair any damages and attempt to re-rent the unit. Therefore, I find that the landlords are entitled to \$2,179.00 in rental arrears for the above period.

As the landlords were successful in this application, I find that they are entitled to recover the \$100.00 filing fee.

The landlords continue to hold the tenant's security deposit of \$294.00. 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 order the landlords to retain the tenant's entire security deposit of \$294.00 in partial satisfaction of the monetary claim.

Conclusion

I grant an Order of Possession to the landlords effective **ten (10) 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 landlords to retain the tenant's security deposit of \$294.00 in partial satisfaction of the monetary claim.

I issue a monetary order in the landlords' favour in the amount of \$1,985.00 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 an order of possession based on a tenant's notice to end tenancy 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: October 07, 2016

Residential Tenancy Branch

