



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT
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* ("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*, *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 11 minutes. The landlord's three agents, landlord DS ("landlord"), "landlord WS" and "landlord AS" attended the hearing and were each 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 accounts payable clerk for the "landlord company" named in this application and that all three agents had authority to represent it at this hearing.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on September 13, 2016, by way of registered mail. The landlord provided a Canada Post receipt and tracking number verbally with this Application. The landlord said that she checked the tracking number and the tenant received and signed for the Application package on October 1, 2016. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Application on September 18, 2016, five days after its registered mailing.

Landlord WS testified that she served the tenant with the landlord's 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. Landlord AS confirmed that she witnessed this posting. The landlord provided a signed, witness proof of service with this Application, confirming the above information. 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 August 6, 2016, three days after its posting.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to reduce the monetary claim to remove November 2016 rent of \$950.00. The landlord made this request, stating that she did not know when the hearing would be, so she initially included a claim for November 2016 rent, but she did not wish to seek it at 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 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 order requested?

Is the landlord 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 5, 2016. Monthly rent in the amount of \$950.00 is payable on the first day of each month. A security deposit of \$475.00 was paid by the tenant and the landlord continues to retain this deposit. The landlord confirmed that the tenancy agreement indicated that a security deposit of \$487.50 was due but the landlord said this amount was an error and was not received from the tenant. The tenant continues to reside in the rental unit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The landlord issued the 10 Day Notice, indicating an effective move-out date of August 16, 2016. The notice states that rent of \$1,569.50 was due on August 1, 2016. The landlord said that rent of \$619.50 was unpaid for July 2016 and \$950.00 was unpaid for

August 2016, totalling \$1,569.50. The landlord confirmed that rent of \$950.00 for each of September and October 2016, totalling \$1,900.00, was unpaid as well.

The landlord seeks a monetary order of \$3,469.50 for July to October 2016 rent 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 landlord is entitled to a two (2) day Order of Possession against the tenant, 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 \$3,469.50 total from July to October 2016. I find that the landlord is entitled to the entire month of rent for October 2016, despite the fact that this hearing was held on October 11, 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 and potentially repair any damages and attempt to re-rent the unit. Therefore, I find that the landlord is entitled to \$3,469.50 in rental arrears from the tenant for the above period.

As the landlord was successful in this 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 \$475.00. 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 landlord to retain the tenant's entire security deposit of \$475.00 in partial satisfaction of the monetary claim.

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 \$475.00 in partial satisfaction of the monetary claim.

I issue a monetary order in the landlord's favour in the amount of \$3,094.50 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: October 11, 2016

Residential Tenancy Branch