



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL PROVIDENCE MANAGEMENT
VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPC, 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 cause and 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 15 minutes. The landlords' agent, SA ("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 had authority to speak on behalf of both landlord companies named in this application, as an agent at this hearing (collectively "landlords").

The landlord testified that the tenant was served with the landlords' application for dispute resolution hearing package ("Application") on October 30, 2016, by way of registered mail. The landlord provided a Canada Post tracking number verbally during the hearing. She stated that the package was delivered and signed for by the tenant on November 2, 2016. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' Application on November 4, 2016, five days after its registered mailing.

I asked the landlord to provide me with a copy of the Notice of Rent Increase, dated January 27, 2016 ("NRI") and the latest rent receipt, dated October 31, 2016, after the

hearing, as these documents were not provided with the landlords' application. I find no prejudice to the tenant in ordering this production, since the tenant received these documents from the landlord prior to the hearing. I received these documents from the landlord after the hearing on December 15, 2016 and considered them in my decision.

The landlord confirmed that the tenant was served with the landlords' 1 Month Notice to End Tenancy for Cause, dated September 27, 2016 ("1 Month Notice") on the same date by way of posting to the rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' 1 Month Notice on September 30, 2016, three days after its posting.

Issues to be Decided

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

Are the landlords entitled to a monetary order 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 from the tenant?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords' claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on August 1, 2014. Monthly rent in the current amount of \$779.00 is payable on the first day of each month. The rent was initially \$760.00 per month as per the written tenancy agreement. The tenant was issued a legal NRI on the same date by way of posting to the rental unit door, to raise the rent effective on May 1, 2016, by \$19.00 per month for a total monthly rent of \$779.00. A security deposit of \$380.00 was paid by the tenant and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant continues to reside in the rental unit.

The landlords issued the 1 Month Notice indicating that “the tenant is repeatedly late paying rent.” The notice indicates an effective move-out date of October 31, 2016. The landlord provided a tenant rent ledger, indicating that the tenant paid rent late more than three times during this tenancy. The ledger indicates that payments were made in July, August, September and October 2016, but that the tenant still owed outstanding rent to the landlords and missed payments in April, May and June 2016. The latest rent receipt from October 31, 2016, for a rent payment of \$780.00, indicates that it is being accepted for “use and occupancy only.” The landlord confirmed that the latest rent payment was applied to the September 2016 rent, so the tenant still owes full rent of \$779.00 for each month from October to December 2016.

The landlords seek a monetary order of \$2,336.00 for rent from October to December 2016 as well as recovery of the \$100.00 filing fee. The landlord said that the tenant overpaid rent by \$1.00 on October 31, 2016 when he paid \$780.00 rather than \$779.00 towards rent, so this was applied towards the rent owed from October to December 2016 of \$2,337.00.

Analysis

I find that the tenant was deemed to have received the landlords’ NRI on January 30, 2016, three days after its posting. The NRI indicates a rent increase of \$19.00, which is within the prescribed *Regulation* amount for 2016. Therefore, I find that the tenant’s rent was legally increased from \$760.00 to \$779.00 per month effective on May 1, 2016.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement. Rent is due on the first day of each month, as per the written tenancy agreement. Residential Tenancy Policy Guideline 38 states that “three late payments are the minimum number sufficient to justify a notice...” The landlords provided a tenant rent ledger showing that rent was late more than three times during this tenancy. Accordingly, I find that the tenant was late paying rent at least three times during this tenancy. I find that the landlords’ 1 Month Notice was issued for a valid reason.

The tenant has not made an application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the failure of the tenant to file an application within ten days led to the end of this tenancy on October 31, 2016, the effective date on the 1 Month Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by October 31, 2016. As this has not occurred, I find that the landlords are entitled to a two (2) Order of Possession, pursuant to section 55 of the *Act*. The tenant has not paid rent in full for

October 2016 so he is not entitled to possession of the rental unit until the end of the month. I find that the landlords' 1 Month Notice complies with section 52 of the *Act*. I issue an Order of Possession to the landlords 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.

As I have issued an order of possession for cause based on the 1 Month Notice, it is not necessary for me to explore the landlords' application for an order of possession for unpaid rent based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 18, 2016 ("10 Day Notice"). Accordingly, this portion of the landlords' application is dismissed with leave to reapply.

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 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 totalling \$2,336.00 from October to December 2016. I find that the landlords are entitled to the entire month of rent for December 2016, despite the fact that this hearing was held on December 15, 2016, because rent is due on December 1, 2016, as per the written tenancy agreement. Further, the landlords 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 landlords are entitled to \$2,336.00 in rental arrears from the tenant 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 from the tenant.

The landlords continue to hold the tenant's security deposit of \$380.00. 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 \$380.00 in partial satisfaction of the monetary claim.

Conclusion

I grant an Order of Possession to the landlords 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.

The landlords' application for an order of possession for unpaid rent based on the 10 Day Notice, dated October 18, 2016, is dismissed with leave to reapply.

I order the landlords to retain the tenant's entire security deposit of \$380.00 in partial satisfaction of the monetary claim.

I issue a monetary order in the landlords' favour in the amount of \$2,056.00 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.

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: December 15, 2016

Residential Tenancy Branch