



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, 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 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 landlord's agent, BH ('the landlord'), testified on behalf of the landlord in this hearing and was given full authority to do so by the landlord. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application") as well as the evidence package. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the Application and landlord's evidence.

BH testified that the landlord served the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the tenant by posting it on the door on November 16, 2016, with an effective date of November 26, 2016. The tenant testified that she had no issue with the service of the 10 Day Notice. In accordance with section 88 of the *Act*, I find the tenant duly served with the 10 Day Notice.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

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 in April 2010 with monthly rent currently set at \$1,066.00, which is payable on the first day of each month. A security deposit of \$480.00 was paid by the tenant and the landlord continues to retain this deposit.

The landlord issued the 10 Day Notice, indicating an effective move-out date of November 26, 2016. The tenant continues to reside at the unit, although the landlord testified that the tenant has not paid rent for the months of November 2016 through to January 2017, and still owes a portion of rent for the month of October 2016. The landlord seeks a monetary order of \$3,384.00, which includes the \$1,066.00 rent for November 2016 through January 2017, the \$566.00 still owed for October 2016, the \$100.00 filing fee minus the \$480.00 security deposit still held by the landlord. The landlord submitted that even after the 10 day Notice was served to the tenant in November, the tenant has not made any efforts to make any payment towards the outstanding rent.

The landlord submitted in the evidence package, letters that were sent to the tenant. A letter addressed to the tenant was sent on September 21, 2016 from the Rental Assistance Clerk, notifying the tenant that the landlord has not received any response to a previous letter dated August 22, 2016 requesting further information to complete their annual review for Rental Assistance. The letter also stated that efforts were made to contact the tenant by telephone.

A subsequent letter, dated November 22, 2016, was sent to the tenant by the landlord indicating that they have not received rent for the month of November in addition to the \$566.00 owing for October within five days of the landlord's 10 Day Notice. The landlord submits that the tenant was given adequate notice regarding the outstanding rent, and confirmed with the accounting department the day prior to the hearing that no efforts have been made.

The tenant testified that she is not disputing the landlord's testimony that the rent has not been paid, nor is she disputing the fact that she did not respond. She testified that her rent was subsidized in the amount of \$566.00 and the remaining \$500.00 is normally an automatic direct deposit rental payment to the landlord out of her account. She became aware that her subsidy was revoked, but was not aware that the \$500.00 was not taken from her account.

The tenant testified that she did make some efforts to contact the subsidy department, but admitted that she did not fill out the appropriate paperwork. The tenant accepts the fact that she did not take the adequate steps to ensure the rent payments were made, and would like the opportunity to remedy this situation.

The landlord responded that the tenant was given ample opportunity to make her payments, and is still seeking an Order of Possession in addition to the Monetary Order.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the testimony of the landlord and the tenant and the supporting documents respecting matters of rent, I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find that the landlord's 10 Day Notice complies with section 52 of the Act.

The tenant has not paid the outstanding rent nor did she make an application pursuant to section 46(4) of the Act within five days of being deemed to have received the 10 Day Notice. The tenant does not have a right under the Act to deduct or withhold rent. Therefore the landlord's application for an Order of Possession is allowed. 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 November 26, 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 November 26, 2016. As this has not occurred, I find that the landlord is entitled to an Order of Possession with a possession date of two days after service of the Order, pursuant to section 55 of the Act.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. The tenant did not dispute the fact that she failed to pay rent of \$566.00 for the month of October 1, 2016, in addition to the rent for the months of November 2016 through to January 2017. I find that the landlord is entitled to the \$3,764.00 in unpaid rent. **I HEREBY ORDER**, pursuant to section 67 of the *Residential Tenancy Act*, the tenant pay to the landlord the sum of \$3,764.00 in unpaid rent.

The landlord continues to hold the tenant's security deposit of \$480.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit of \$480.00 plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

Conclusion

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant 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 security deposit of \$480.00 in partial satisfaction of the monetary claim.

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee.

I issue a \$3,384.00 Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent plus the filing fee, and also allows the landlord to retain the tenant's security deposit:

Item	Amount
Unpaid Rent for October 2016	\$566.00
Unpaid Rent for November 2016	1,066.00
Unpaid Rent for December 2016	1,066.00

Unpaid Rent for January 2017	1,066.00
Less Security Deposit	-480.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$3,384.00

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: January 10, 2017

Residential Tenancy Branch