Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

<u>Dispute Codes</u>   OPR, MNR, MNSD, MNDC, FF

<u>Introduction</u>

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

- an Order of Possession for unpaid rent pursuant to section 55;
- a Monetary Order for unpaid rent and damages pursuant to section 67;
- authorization to retain the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 10 minutes. The landlords were represented by their agent (the "landlord") who 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 testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), dated February 21, 2017 was served personally on the tenant on February 22, 2017. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlords' 10 Day Notice on February 22, 2017.

The landlord testified that the landlords' application for dispute resolution dated March 2, 2017 was sent to the tenant by registered mail on March 8, 2017. The landlord provided a Canada Post tracking number as evidence of service. I find that the tenant was served with the landlord's application for dispute resolution and evidence package in accordance with sections 89 and 90 of the Act on March 13, 2017, five days after mailing.

At the At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that there was a calculation error in determining the total rent arrear. The landlord said that the actual arrear is $12,500.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as I find that it could be reasonably anticipated that the corrected total amount of rent arrear would be sought, I amend the landlords' Application to increase the landlords' monetary claim from $12,000.00 to $12,500.00.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent?
Are the landlords entitled to monetary compensation as claimed?
Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This tenancy began in April, 2016. The rent is $2,500.00 payable on the first of the month. A security deposit of $1,250.00 was paid by the tenant at the start of the tenancy and still held by the landlords.

The landlord testified that at the time the 10 Day Notice was issued the tenancy was in arrears by $10,000.00, the amount initially sought in the 10 Day Notice. The landlord testified that the tenant has not made payment since the 10 Day Notice was issued nor are they aware of the tenant having filed a dispute of the 10 Day Notice. The landlord testified that the tenant has failed to pay rent for November and December, 2016, and January, February and March, 2017. The landlord said that the total amount owing for the tenancy as of April 4, 2017, the date of the hearing is $12,500.00.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenant was obligated to pay the monthly rent in the amount of $2,500.00. I accept the landlord's evidence that the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenant dispute the 10 Day Notice within that 5 day period. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, March 1, 2017. Therefore, I find that the landlords are entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the landlords' undisputed evidence that the total amount of arrears for this tenancy is $12,500.00. I issue a monetary award in the landlords' favour for unpaid rent of $12,500.00 as at April 4, 2017, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlords' application was successful, the landlords are also entitled to recovery of the $100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenant's security deposit of $1,250.00 in partial satisfaction of the monetary award issued in the landlords' favour.

Conclusion

I grant an Order of Possession to the landlords effective **2 days after service on the tenants**. 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 issue a monetary order in the landlords' favour in the amount of $11,350.00 under the following terms, which allows the landlords to recover unpaid rent and the filing fee for their application:

Item	Amount
Unpaid Rent November	$2,500.00
Unpaid Rent December	$2,500.00
Unpaid Rent January	$2,500.00
Unpaid Rent February	$2,500.00
Unpaid Rent March	$2,500.00
Filing Fees	$100.00
Less Security Deposit	-$1,250.00
Total Monetary Order	**$11,350.00**

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: April 4, 2017

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Residential Tenancy Branch