



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes

OPR, MNR, 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, 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 tenant did not attend this hearing, which lasted approximately 7 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 landlords named in this application, as an agent at this hearing (collectively "landlords") and she provided a written authorization to this effect.

The landlord testified that the tenant was served with the landlords' application for dispute resolution hearing package on May 11, 2017, by way of registered mail. The landlord provided a Canada Post receipt and tracking number. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' application on May 16, 2017, five days after its registered mailing.

The landlord confirmed that she served the tenant with the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 26, 2017 ("10 Day 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' 10 Day Notice on April 29, 2017, three days after its posting.

At the outset of the hearing, the landlord confirmed that the landlords did not receive a security deposit from the tenant and the landlords mistakenly applied to retain this deposit in this application. Accordingly, this portion of the landlord's application is withdrawn.

Issues to be Decided

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

Are the landlords entitled to a monetary order for unpaid rent?

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 approximately three years ago but she did not know the exact date. Monthly rent in the amount of \$900.00 is payable on the first day of each month. A written tenancy agreement was not signed, as only a verbal agreement was reached. The tenant continues to reside in the rental unit.

The landlords issued the 10 Day Notice for unpaid rent of \$2,700.00 due on April 1, 2017. The effective move-out date on the notice is May 6, 2017. The landlords seek an order of possession, a monetary order of \$3,600.00 for unpaid rent, and recovery of the \$100.00 filing fee. The landlord said that the tenant failed to pay rent of \$900.00 for each month from February to June 2017 inclusive.

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 April 1, 2017, 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 May 9, 2017, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by May 9, 2017. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. 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 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 landlord provided undisputed evidence that the tenant failed to pay rent totalling \$3,600.00 from February to June 2017, inclusive. I find that the landlords are entitled to the entire month of rent for June 2017, despite the fact that this hearing was held on June 19, 2017, because rent is due on June 1, 2017, as per the parties' 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. The landlord confirmed that she was not seeking July 2017 rent of \$900.00 and she wanted to amend her application to reduce the monetary claim from \$4,500.00 to \$3,600.00 on that basis.

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

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.

I issue a monetary order in the landlords' favour in the amount of \$3,700.00 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 to retain the tenant's security deposit is withdrawn. 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: June 19, 2017

Residential Tenancy Branch