



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 MNSD MNDC MNR FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- a monetary order for compensation for money owed or losses under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The landlord's agent, SA ('the landlords'), testified on behalf of the landlords in this hearing and was given full authority to do so by the landlords. 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.

SA testified that the tenant was served with the landlords' application for dispute resolution hearing package on May 27, 2017 by way of registered mail. The landlords provided a Canada Post tracking number in their evidence. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' application on June 1, 2017, five days after its registered mailing.

SA testified that the tenant was served with the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 26, 2017 ("10 Day Notice"), on April 27, 2017, by way of registered mail. The landlords provided a Canada Post tracking number in their evidence. 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 May 2, 2017, five days after its registered mailing.

Issue(s) to be Decided

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

Are the landlords entitled to monetary compensation for unpaid rent and losses?

Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover their filing fee for this application?

Background and Evidence

The landlords' agent, SA, testified regarding the following facts. This month-to-month tenancy began on July 1, 2016, with monthly rent in the amount of \$800.00 (reduced from \$900.00), payable on the first day of each month. The landlords hold a security deposit in the amount of \$450.00 for this tenancy. The tenant continues to reside in the rental unit.

The landlords issued a 10 Day Notice to End Tenancy, dated April 26, 2017 as the tenant failed to pay rent due on April 1, 2017. The landlord's agent, SA, testified that the tenant owes \$800.00 in outstanding rent each for the months of February 2017 through to July 2017, plus \$708.00 in outstanding utility bills.. The total outstanding rent and utilities are \$5,508.00. The landlords are seeking an Order of Possession for July 15, 2017, as well as monetary compensation for the unpaid rent and utilities.

The tenant testified in the hearing that he had only missed the rent payments for the months of June and July 2017. The tenant testified that he had receipts for the past payments he had made, but he could not recall what was paid, or when. The tenant did not provide any written evidence for this hearing.

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 the notice to be valid.

The tenant admitted that he did not pay the outstanding rent for June and July 2017, nor has he applied for dispute resolution to dispute the 10 day Notice. The tenant has only confirmed that the rent has not been fully paid to the landlord, and he does not have a right *under the Act* to deduct or withhold rent. Therefore the landlords' application for an Order of Possession is

allowed. Effectively, as of May 12, 2017, the corrected, effective date of the 10 day Notice, the tenancy has come to an end.

The tenant did not dispute the fact that he failed to pay June and July 2017 rent. The tenant was unable to provide proof of payment for the months of February 2017 through to May 2017, and he could not recall how much was paid, or when. The tenant testified that he had receipts for the payments made, but did not submit any receipts or proof of payment for this hearing. On this basis, I find that the landlords are entitled to a monetary order in the amount of \$5,508.00 for the unpaid rent and utilities.

The landlords continue to hold the tenant's security deposit of \$450.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' security deposit of \$450.00 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 landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee.

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 \$5,158.00 Monetary Order in favour of the landlords, which allows the landlords to recover unpaid rent and utilities, the filing fee for this application, and also allows the landlords to retain the tenant's security deposit in partial satisfaction of the monetary claim. 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: July 14, 2017

Residential Tenancy Branch