



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LIVE HOLDING OF CANADA, INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDC, FF, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and loss pursuant to section 67;
- authorization to retain all or a portion of 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 from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent, AM (the "landlord"). The tenant represented herself with the assistance of the other occupant of the rental premises, HM.

Initially, I was scheduled to hear only the tenant's application today. The landlord's application was originally scheduled to be heard by me on September 20, 2017. The

landlord requested that I bring the matters together so that both could be heard at once. The tenant testified that she had received the landlord's application for dispute resolution. Pursuant to 2.10 of the Rules of Procedure, as I find that both applications pertain to the same residential property, involve the same parties, and similar evidentiary matters would be considered for each application I ordered that the matters be brought together and heard at once.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession for unpaid rent?

Is either party entitled to a monetary award as claimed?

Is either party entitled to recover the filing fee for their application from the other?

Background and Evidence

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

The parties agreed on the following facts. This fixed term tenancy began in July, 2016. The monthly rent is \$1,495.00. A deposit of \$1,495.00 was paid at the start of the tenancy. In addition to the rental unit the tenants also lease commercial premises from the landlord in the same complex.

In the previous hearing regarding this tenancy held on May 31, 2017 under the file number on the first page of this decision, another Arbitrator found that the tenant had not paid rent for the period between October 1, 2016 and May 31, 2017. The previous Arbitrator found that there was a rental arrear of \$11,960.00. The previous Arbitrator found that the term in the tenancy agreement regarding late fees is not enforceable. The previous Arbitrator authorized the landlord to retain the security deposit paid for this tenancy and issued a monetary Order in the landlord's favour for the balance of \$11,465.00.

The landlord testified that the tenant has not paid any rent since October, 2016. The tenant confirmed that they have not made any rent payment. The landlord said that the amount owing for the months of June and July, 2017, the period since the time of the previous hearing to the present hearing is \$2,990.00.

The tenant and occupant both testified that they have not paid any amount of rent for the residential unit as the landlord has refused payment. They said that they dispute the amount the landlord is charging as rent fee but have attempted to make payment for the base rent. The tenant said that correspondence mailed to the landlord's address for service on the tenancy agreement is returned unopened. The occupant initially testified that agents of the landlord have not attended at the rental building to collect payment but contradicted himself and agreed that the landlord's agent is frequently on site but will not accept the amount that the tenant is attempting to pay.

The tenant testified that they are seeking a monetary award in the amount of \$8,000.00 as they believe they have suffered a loss of income by dealing with the landlord, attending at the residential tenancy branch, appearing at hearings and responding to the landlord's applications for dispute resolution and notices to end tenancy.

Analysis

Section 46(1) of the *Act* establishes that a landlord may end a tenancy for unpaid rent "by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice."

I find that pursuant to section 26(1) of the *Act* and the tenancy agreement, the tenant was obligated to pay the monthly rent in the amount of \$1,495.00. I accept the parties' undisputed evidence that the tenant failed to pay the full rent since October, 2016. I accept the undisputed evidence of the parties that the tenant failed to pay the full rent due within the 5 days after being served on June 1, 2017, granted under section 46(4) of the *Act*.

I do not find the tenant's evidence that the landlord refused to accept payment to be credible. The tenant and occupant provided testimonies which contradicted one another and themselves. Initially, the tenant said that the landlord did not attend at the rental building to collect the rent but later the tenant and occupant testified that they did not issue payment as they disputed the late fees charged. They also testified that the landlord's agent claimed he had no authority to accept a lesser amount and refused to take rent payment from the tenant. I do not find the tenant's evidence credible and find that the tenant failed to pay rent as required under the tenancy agreement.

I find that the 10 Day Notice conforms to the form and content requirements of section 52 of the *Act*, as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice and the grounds for ending the tenancy.

Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

In regards to the landlord's application for a monetary award, I find that a monetary Order pertaining to the unpaid rent for the period up to May 31, 2017 was issued in the previous hearing where a final and binding decision was made. In that earlier decision the previous Arbitrator issued a monetary Order and authorized the landlord to retain the security deposit for this tenancy. The previous Arbitrator also found that the term in the tenancy agreement regarding late fees to be unenforceable. I find that I have no jurisdiction to consider a matter that has already been the subject of a final and binding decision by another arbitrator appointed under the *Act*. As such, I will only consider losses that arose from the date of the previous hearing, May 31, 2017 to the present hearing, July 21, 2017.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the evidence of the parties that the monthly rent for this tenancy is \$1,495.00 and the tenant has not paid any rent for this tenancy for the month of June and July, 2017. I accept the landlord's evidence that the rental arrear for this tenancy for those months is \$2,990.00. Accordingly, I issue a monetary award in the landlord's favour in that amount.

I find that the tenant has provided insufficient evidence in support of their claim for a monetary award for loss and damages. I find that the landlord's issuance of Notices to End Tenancy and Applications for Dispute Resolution does not constitute harassment, as the tenant characterizes, nor is it a violation of the *Act*, regulations or the tenancy agreement. I find that the tenant has not established there has been a loss arising from a violation and dismiss the tenant's application for a monetary award.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

As the tenant's application was not successful, I find that they are not entitled to recovery of their filing fee for this application.

Conclusion

I grant an Order of Possession to the landlord effective **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 favour of the landlord in the amount of \$3,090.00, as follows:

Rental Arrears for June 2017	\$1,495.00
Rental Arrears for July 2017	\$1,495.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$3,090.00

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.

I dismiss the tenant's application.

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 21, 2017

Residential Tenancy Branch