



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HARRON INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR OPR MNR 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 pursuant to section 67; and authorization to recover the filing fee for this application from the tenant pursuant to section 72. Pursuant to the Act, the tenant applied to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other party's Application for Dispute Resolution and evidence for this hearing. The tenant confirmed receipt of the landlord's 10 Day Notice to end the tenancy personally served to her on July 14, 2017. I find that the landlord was sufficiently served with the tenant's application for dispute resolution and that the tenant was sufficient served with the landlord's 10 Day Notice and the subsequent application for dispute resolution in accordance with sections 88, 89, and 90 of the Act.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled or is the landlord entitled to an Order of Possession?

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

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began on June 1, 2013 as a fixed term tenancy. After the one year fixed term, this tenancy continued on a month to month basis. The current rental amount of \$861.00 is due on the first of each month. The landlord holds a \$400.00 security deposit paid by the tenant at the outset of this tenancy (May 23, 2017). The landlord sought an Order of Possession and a monetary order for \$385.00 in unpaid rent and an insufficient funds fee. The tenant sought to cancel the 10 Day Notice to End Tenancy issued by the landlord.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on July 4, 2017 when the tenant failed to pay the entire rental amount on July 1, 2017. The tenant had provided post-

dated cheques at the outset of this tenancy. The landlord provided undisputed evidence (documentary and testimony) that the tenant's July 2017 rent cheque was returned for insufficient funds.

The tenant testified that, in the four years she has lived in the rental unit, she has never been late or failed to pay her rent. She testified that July 2017 was a transitional month and that, now that she has two jobs she is able to pay her rent. She points to the fact that she paid her full rent in August and September 2017. The landlord confirmed that the tenant's rent was paid in full in August and September 2017 however, the landlord also testified that the tenant has not yet paid the rental arrears from July 2017. Furthermore, the landlord testified that the tenant was issued rental payment receipts marked "for use and occupancy only" for August and September 2017 rent: the landlord provided undisputed testimony that the tenant was advised that her rent payments did not reinstate her tenancy.

After the issuance of a 10 Day Notice on July 4, 2017, the tenant applied (within 5 days) to cancel the notice. The tenant, however, did not pay her rent in July 2014 at the time it was due, after the issuance of the 10 Day Notice or prior to this hearing date.

The landlord sought a monetary order in the amount of \$360.00 towards unpaid rent. The landlord provided undisputed testimony that the tenant's July rent payment was returned for insufficient funds, that the tenant paid \$501.00 of the outstanding rental amount and that \$360.00 is still owed by the tenant.

The landlord also testified that, pursuant to the provisions of the Act and the residential tenancy agreement, the tenant is required to pay \$25.00 in an insufficient funds charge for the returned July 2017 rent cheque.

Analysis

The tenant failed to pay the July 2017 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not been successful in her application pursuant to section 46(4) of the *Act* and the tenant has failed to pay the outstanding rent amount. Therefore, in accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by July 14, 2017. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

I find that the landlord is entitled to receive an order for unpaid rent in July 2017. The landlord provided undisputed testimony, confirmed by the tenant that the tenant failed to pay July 2017 rent in full at the time it was due. Further, as of the date of this hearing, the July 2017 rent balance remains outstanding. I find that the landlord was clear with the tenant that, regardless of further payment the landlord sought to end her tenancy at this hearing, and the July 2017 rent remains partially unpaid, I am issuing the attached monetary order that includes the landlord's application for \$360.00 in unpaid rent for July 2017.

The landlord also applied to recover a \$25.00 fee for insufficient funds with respect to the July 2017 rent payment/cheque. The landlord provided copies of the written tenancy agreement which established this insufficient funds fee as well as a copy of the tenant's returned cheque. I find that the landlord is entitled to a \$25.00 insufficient funds fee for the month of July 2017.

The landlord testified that she continues to hold a security deposit of \$400.00 plus any interest from May 23, 2013 to the date of the decision for this tenancy. I will allow the landlord to retain the security deposit *plus any interest* in partial satisfaction of the monetary award. [There is no interest payable for this period]

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

Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlord as follows:

Rental Arrears for July 2017	\$360.00
Insufficient Funds Fee for July 2017 rent	25.00
Less Security Deposit (No interest)	-400.00
Recovery of Filing Fee for this application	100.00
Total Monetary Award	\$85.00

The landlord is provided with this monetary Order in the above terms and 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: September 19, 2017

Residential Tenancy Branch

