



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PREMIER CHOICE INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNRL-S, OPR, FFL

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the 10 Day Notice to End Tenancy (the "10 Day Notice"), pursuant to section 46.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent pursuant to section 67;
- authorization to retain the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open for 19 minutes in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The property owner and the property manager (the "landlord") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the property owner, the landlord and I were the only ones who had called into this teleconference.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any evidence or submissions from the tenant, I order the tenant's application dismissed without liberty to reapply.

The landlord testified that he personally served tenant A.G. with the notice of dispute resolution packages for both tenant A.G. and tenant M.G. on June 15, 2018. The landlord testified that tenant M.G. ran inside the rental property when she saw the landlord approaching with the dispute resolution packages and refused to come out of the property. Tenant A.G. accepted both dispute resolution packages and went back into the rental property where tenant M.G. was waiting. I find that tenant A.G. was served with this package on June 15, 2018, in accordance with section 89 of the *Act*. While tenant M.G. was not served in accordance with section 89 of the *Act*, pursuant to section 71 of the *Act*, I find that the dispute resolution package was sufficiently served on tenant M.G. for the purposes of this *Act* as she was present when the packages were served on tenant A.G.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled a Monetary Order for unpaid rent pursuant to sections 26, 67 and 72 of the *Act*?
3. Is the landlord entitled to retain the tenants' security deposit in part satisfaction of their monetary claim pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee for this application from the tenants pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord and property owner, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided undisputed testimony that this tenancy began on March 1, 2018 and is currently ongoing. Monthly rent in the amount of \$1,450.00 is payable on the first day of each month. A security deposit of \$725.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for the landlord's application.

The landlord testified that the tenant did not pay rent on May 1, 2018 when it was due. On May 11, 2018 the landlord personally served a 10 Day Notice, with an effective date of May 23, 2018 on tenant A.G. The landlord provided undisputed testimony that the tenants have not paid rent for May, June or July 2018.

Analysis

Section 88 of the *Act* states that a 10 Day Notice may be personally served on the tenant. I accept the landlord's evidence that he personally served tenant A.G. with the 10 Day Notice and find that service was effected on May 11, 2018. The landlord also testified that the 10 Day Notice was sent to the tenants via registered mail.

The tenants failed to pay the May 2018 rent within five days of receiving the 10 Day Notice. The tenants have not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice: the tenants' application was made 6 days after receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of this tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by May 23, 2018, as that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement. I find that the tenants were obligated to pay the monthly rent in the amount of \$1,450.00 for the months of May, June and July 2018. Pursuant to section 67 of the *Act*, I find that the tenants owe the landlord \$4,350.00 in unpaid rent.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenants' entire security deposit in the amount of \$725.00 in part satisfaction of their monetary claim for unpaid rent against the tenant.

The landlord applied for reimbursement of the cost of sending the 10 Day Notice via registered mail in the amount of \$11.34. I disallow this claim as the only fund associated with filing a claim that is recoverable is the filing fee. As the landlord is successful in

this application, I find that the landlord is entitled to recover the \$100.00 filing fee for this application.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. Should the tenants 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 to the landlord under the following terms:

Item	Amount
May 2018 rent	\$1,450.00
June 2018 rent	\$1,450.00
July 2018 rent	\$1,450.00
Filing Fee	\$100.00
Less security deposit	- \$725.00
TOTAL	\$3,725.00

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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 09, 2018

Residential Tenancy Branch