



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GOODWOOD PROPERTY INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNDCL, MNRL-S, FFL, CNR

Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's notice to end tenancy for unpaid rent, 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 sections 26 and 67;
- a Monetary Order for damage or compensation under the *Act*;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant's application incorrectly listed the building manager as the landlord. Pursuant to section 64 of the *Act*, I amended the tenant's application to list the correct landlord.

The property supervisor testified that he served the tenants separate notice of dispute resolution packages by registered mail on June 19, 2018. The landlord provided the Canada Post Tracking Numbers to confirm these registered mailings. The tenants confirmed receipt of the dispute resolution packages but did not recall on what day. I find that the tenants were deemed served with these packages on June 24, 2018, five days after their mailing, in accordance with sections 89 and 90 of the *Act*.

Tenant C.H. testified that he personally served the building manager with the notice of dispute resolution package in June or July 2018. The building manager confirmed receipt of the dispute resolution package in June 2018. I find that the landlord was served with this package in accordance with section 89 of the *Act*.

The landlord applied for a Monetary Order for unpaid rent and a Monetary Order for damage or compensation under the *Act*. The landlord is seeking unpaid rent for the months of June to August 2018 under both heads of damages. I find that this claim properly falls under the landlord's application for a Monetary Order for unpaid rent. Therefore, pursuant to section 64 of the *Act*, I amend the landlord's application to remove the landlord's claim for damage or compensation under the *Act*.

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 to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to retain the tenants' security deposit, 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 both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 15, 2018 and is currently ongoing. Monthly rent in the amount of \$745.00 is payable on the first day of each month. A security deposit of \$372.50 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The building manager testified that the tenants did not pay rent on June 1, 2018 when it was due. On June 2, 2018 the building manager posted a 10 Day Notice to End Tenancy for unpaid rent with an effective date of June 12, 2018 (the "10 Day Notice") on

the tenants' door. The tenants testified that they received the 10 Day Notice on June 2, 2018.

The tenants testified that the 10 Day Notice stated the wrong unit number and tenant phone number under the section labelled "Tenant Address". The 10 Day Notice listed the correct unit number when stating the address the tenants were required to vacate.

The tenants testified that they have not paid any rent for June, July or August 2018.

Analysis

Based on the testimony of both parties and the evidence submitted, I find that service of the 10 Day Notice was effected on the tenants on June 2, 2018.

While the landlord listed the incorrect unit number in the "Tenant Address" section of the 10 Day Notice, I find that the tenant knew or should have known the information that was omitted from the notice, that being their correct unit number. In addition, since the address was correct in the latter portion of the 10 Day Notice, in the section stating the address that was to be vacated, I find that in the circumstances, it is reasonable to amend the "Tenant Address" section of the notice. Pursuant to section 68 of the *Act*, I amend the 10 Day Notice to state the correct tenant unit number.

Section 52 of the *Act* states that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

Section 52 does not require the tenants' phone number to be correct; therefore, I find that the incorrect tenant number does not invalidate the 10 Day Notice. I find that the 10 Day Notice is valid.

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 \$745.00 on the first day of each month from June to August 2018 which they failed to do.

Pursuant to the 10 Day Notice, this tenancy was scheduled to end on the effective date of June 12, 2018; however, the tenants filed to dispute the 10 Day Notice within the allowed time frame under section 46 of the *Act*. Upon reviewing the tenants' application and hearing the testamentary evidence of both parties, I find that the tenants' application to dispute the 10 Day Notice is without merit. The tenants admitted to failing to pay the rent in full when it was due between June and August 2018 contrary to section 26(1) of the *Act*. I dismiss the tenant's application in full, without leave to reapply.

I find that the tenant owes the landlords \$2,235.00 in back rent from June to August 2018.

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

As the landlord was successful in its application, I find that the landlord is entitled to recover the filing fee in the amount of \$100.00 from the tenant.

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 \$372.50 in part satisfaction of its monetary claim for unpaid rent against the tenants.

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
June 2018 rent	\$745.00
July 2018 rent	\$745.00
August 2018 rent	\$745.00
Filing Fee	\$100.00
Less security deposit	- \$372.50
TOTAL	\$1,962.50

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: August 02, 2018

Residential Tenancy Branch