



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WEST FOURTH AVENUE HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

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

- an order of possession for unpaid rent, pursuant to section 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, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 8 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he had permission to speak on behalf of the landlord company named in this application, as an agent at this hearing.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on June 25, 2018, by way of registered mail. The landlord provided a Canada Post receipt and tracking number with this application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on June 30, 2018, five days after its registered mailing.

The landlord confirmed that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 10, 2018 ("10 Day Notice"), on the June 11, 2018, by way of registered mailing. The landlord provided a Canada Post receipt and tracking number with this application. The effective move-out date on the notice is June 21, 2017. In accordance with sections 88 and 90 of the *Act*, I find that the

tenant was deemed served with the landlord's 10 Day Notice on June 16, 2018, five days after its registered mailing.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the monetary claim to include July and August 2018 rent of \$1,575.00 for each month. The tenant is aware that rent is due on the first day of each month. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required her to vacate earlier for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay her rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent, despite the fact that she did not attend this hearing.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

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

Is the landlord entitled to retain the tenant's security deposit?

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

Background and Evidence

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

The landlord testified regarding the following facts. This tenancy began on June 1, 2018. Monthly rent in the amount of \$1,575.00 is payable on the first day of each month. A security deposit of \$700.00 was paid by the tenant and the landlord continues to retain this deposit. No written tenancy agreement was signed by both parties, as only an oral agreement was reached. The tenant continues to reside in the rental unit.

The landlord seeks an order of possession against the tenant. The landlord issued the 10 Day Notice for unpaid rent of \$1,575.00 due on June 1, 2018. The landlord stated that the tenant paid rent of \$800.00 towards June 2018 rent. He claimed that the balance owing for June 2018 is \$775.00. The landlord testified that the tenants failed to

pay rent for July and August 2018 in the amount of \$1,575.00 for each month. The landlord seeks a monetary order of \$3,925.00 for unpaid rent from June 1, 2018 to August 31, 2018. The landlord also seeks to recover the \$100.00 filing fee for this application.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on June 1, 2018, within five days of being deemed to have received the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on June 26, 2018, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by June 26, 2018. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

Section 26 of the *Act* requires the tenant to pay monthly rent to the landlord on the date indicated in the tenancy agreement, which in this case, the landlord said was on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate a landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenant failed to pay rent totalling \$3,925.00 from June 1, 2018 to August 31, 2018. Although this hearing occurred on August 17, 2018, I find that rent was due on August 1, 2018. I find that the landlord would have been unable to rent the unit for August 2018, as the tenant is still residing in the rental unit as of the date of this hearing. Accordingly, I find that the landlord is entitled to rental arrears of 3,925.00 from the tenant.

The landlord continues to hold the tenant's security deposit of \$700.00. Over the period of this tenancy, no interest is payable on the security deposit. The landlord applied to retain the security deposit and in accordance with the offsetting provisions of section 72

of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$700.00 in partial satisfaction of the monetary award.

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

Conclusion

I grant an Order of Possession to the landlord 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 order the landlord to retain the tenant's entire security deposit of \$700.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$3,325.00 against the tenant. 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: August 17, 2018

Residential Tenancy Branch