



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent / loss of revenue - Section 67;
3. An associate Order to retain the security deposit as offset - Section 38
4. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given opportunity to present all relevant evidence and testimony in respect to the landlord's claims and to make relevant prior submission to the hearing and fully participate in the conference call hearing. The tenant acknowledged receiving the landlord's application and evidence in this matter, however did not submit evidence of their own. The parties were given an opportunity to mutually resolve their dispute to no avail. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on April 01, 2006. Rent in the amount of \$813.31 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$305.00 which they retain in trust. The tenant failed to pay rent and arrears in the month of August 2018 and on August 07, 2018 the landlord served the tenant with a notice to end tenancy for non-payment of rent by posting it on their door – deemed received by the tenant August 10, 2018. The tenant did not pay the outstanding rent stated on the Notice to End within the 5 days prescribed by the Act and stated on the Notice to

End. The tenant also failed to dispute the Notice to End within the 5 days prescribed by the Act and stated on the Notice to End. None the less, on August 30, 2018 the tenant paid the landlord \$600.00 toward arrears which was accepted by the landlord for 'use and occupancy only'. The tenant did not pay the rent for September 2018 when due, however did pay the landlord \$750.00 on September 09, 2018 and \$300.00 September 14, 2018 toward total arrears, both payments accepted for 'use and occupancy only' and not as a reinstatement of the tenancy. On September 26, 2018 the tenant paid \$813.31. The quantum of the landlord's monetary claim is inclusive of a late payment of rent fee of \$25.00 for each of the months of August and September 2018, for which fees the Tenancy Agreement provides. The tenant did not effectively dispute the landlord's claims.

Analysis

Based on the landlord's evidence and the testimony of both parties I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The tenant did not pay the rent within the required time to do so or before the effective date of the Notice to End (August 20, 2018). Also the tenant has not applied for Dispute Resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts, and as the rent for October has been accepted by the landlord for use and occupancy, I find that the landlord is entitled to an **Order of Possession** effective no sooner than October 31, 2018.

On reflection of the evidence I also find that the landlord has established a monetary claim for unpaid rent. The landlord is also entitled to recovery of the filing fee. The security deposit and interest will be off-set from the award made herein.

Calculation for Monetary Order is as follows

Rental Arrears to August 01, 2018	\$869.52
Late payment of rent fee - August 2018	25.00
Tenant's payment for use and occupancy only – August 30, 2018	-600.00
Rent owed – September 1, 2018	813.31
Tenant's payment for use and occupancy only – September 09, 2018	-750.00
Late payment of rent fee – September 2018	25.00
Tenant's payment for use and occupancy only – September 14, 2018	-300.00
Tenant's payment for use and occupancy only – September 26, 2018	-813.31
Rent owed – October 01, 2018	813.31
Total arrears owed landlord on hearing date	\$ 82.83
Filing fee to landlord	100.00

<i>Minus tenant's security deposit and interest to date of \$10.41</i>	-315.41
Balance of tenant's security deposit in trust with landlord	(\$132.58)

Conclusion

The landlord's application in relevant part is granted.

I grant an Order of Possession to the landlord effective **October 31, 2018**. If the landlord seeks to rely on this Order the tenant must be served with the Order of Possession. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I Order that the landlord retain **\$182.83** of the tenant's security deposit and applicable interest in full satisfaction of their monetary claim and must retain the balance of the tenant's deposit in the reduced amount of \$132.58 in trust to be administered at the end of the tenancy in accordance with the Act.

This Decision is final and binding.

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: October 22, 2018

Residential Tenancy Branch