



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-S, FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to obtain an order of possession for unpaid rent or utilities, and for a monetary order for unpaid rent or utilities, for compensation for damage or loss under the *Act*, regulation or tenancy agreement, to retain the tenants' security deposit, and to recover the cost of the filing fee.

Two agents for the landlord DF and FL ("agents") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agents were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The agents testified that the Notice of Hearing, application and documentary evidence were served on tenant PH only by registered mail on December 27, 2018, which is supported by the Canada Post registered mail customer receipt submitted in evidence. The tracking number has been included on the cover page of this decision for ease of reference. According to the online registered mail tracking website information the registered mail package was unclaimed and marked as "Returned to Sender". Based on the above, I find only tenant PH ("tenant") was deemed served with the Notice of Hearing, application and documentary evidence five days after the registered mail was sent in accordance with section 90 of the *Act*. Therefore, I find the tenant is deemed served on January 1, 2019.

Given the above, I will not name tenant GH, Deceased, on any resulting monetary order as I find GH, Deceased, was not served in accordance with the Rules of Procedure. As

the tenant did not attend the hearing, I find that this application is undisputed and unopposed by the tenant.

Preliminary and Procedural Matters

Firstly, the agents requested to increase their monetary claim from the original amount of \$1,829.28 to also include loss of rent for February 2019 as the rent unit remains occupied as personal items have not been removed. The agents were advised that loss of February 2019 rent of \$889.62 would be included as I find the tenant would not be prejudiced by such an amendment as the tenant would know or ought to have known that by continuing to occupy the rental unit into February 2019 that loss of rent would be suffered by the landlord. This amendment was also permitted pursuant to section 64(3) of the *Act*.

The agents confirmed their email address at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to the landlord and sent by regular mail to the respondents, as an email address for the respondents was not known by the agents.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A tenancy began on December 1, 1994. Originally, monthly rent in the amount of \$665.00 was due on the first day of each month. The landlord submitted several Notices of Rent Increases in evidence and testified that current monthly rent was \$889.62. The tenants paid a security deposit of \$300.00 at the start of the tenancy which the landlord continues to hold. I find the interest on the security deposit is \$62.30 under the *Act* and as a result, I find the landlord is holding a total security deposit including interest of \$362.30. The agent confirmed service of the 10 Day Notice by posting to the tenants' door on December 5, 2018. The 10 Day Notice included an effective vacancy date of December 15, 2018 and indicated that \$889.62 was owed as of December 1, 2018. The tenants

did not dispute the 10 Day Notice and did not pay any of the amount owed within five days of receiving the 10 Day Notice or on any date thereafter.

As the agents confirmed that the rental unit remains occupied as personal items have not been removed. The landlord's claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. <i>Credit on file</i>	-\$102.75
2. Unpaid December 2018 rent	\$889.62
3. Late fee December 2018	\$25.00
4. NSF fee	\$25.00
5. Loss of January 2019 rent	\$889.62
6. Late fee January 2019 rent	\$25.00
7. Loss of February 2019 rent	\$889.62
8. Filing fee	\$100.00
TOTAL	\$2,741.11

The tenancy agreement clause 7 lists the late fee as \$20.00 and not \$25.00 as indicated in the landlord's claim. The copy of the NSF (non-sufficient funds) bank record does not indicate a \$25.00 amount, and does not include an amount charged from the bank. The tenancy agreement says a charge of \$20.00 will be applied to all NSF cheques.

Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the agent during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenant failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The effective vacancy date of the 10 Day Notice is listed as December 15, 2018. The effective date would automatically correct to December 18, 2018 pursuant to section 53 of the *Act* as documents posted to the tenant's door are deemed served three days after they were posted on December 5, 2018, pursuant to section 90 of the *Act*. I find the tenants are conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the corrected effective vacancy date of the 10 Day Notice, which corrects to December 18, 2018. Therefore, I grant the landlord an order of

possession effective **two (2) days** after service on the tenants. I find the tenancy ended as of December 18, 2018.

Claim for unpaid rent and loss of rent –The agents testified that the rental unit continues to be occupied and that no rent has been received for December 2018, or January 2019 and February 2019. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$2,668.86**, comprised of \$889.62 for each of the three months described above.

I find the landlord is only entitled to a late fee of **\$20.00** for December 2018 and no late fees after that point as the tenancy ended December 18, 2018. I find the landlord is entitled to one NSF fee for the NSF November 2018 cheque, in the amount of **\$20.00**.

The landlord is holding the tenants' security deposit of \$362.30 which includes interest. As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**. I will also offset the credit on the tenants' account of \$102.75.

Monetary Order – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit plus interest in interest as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid December 2018 rent	\$889.62
2. Late fee December 2018	\$20.00
3. NSF fee	\$20.00
4. Loss of January 2019 rent	\$889.62
5. Loss of February 2019 rent	\$889.62
6. Filing fee	\$100.00
Subtotal	\$2,808.86
<i>Less tenants' credit of \$102.75</i>	<i>-(\$102.75)</i>
<i>Less tenants' security deposit plus interest</i>	<i>-(\$362.30)</i>
TOTAL OWING BY TENANT TO LANDLORD	\$2,343.81

Given the above, and pursuant to sections 67 and 72 of the *Act*, I authorize the landlord to retain the tenants' full security deposit including in interest of \$362.30 from the **\$2,808.86** amount owing to the landlord. I also deduct from that amount, the tenants' credit on file of \$102.75. Therefore, I grant the landlord a monetary order for the balance owing by the tenant to the landlord in the amount of **\$2,343.81**.

Conclusion

The landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$2,808.86 as indicated above. The landlord has been authorized to retain the tenants' full security deposit including interest which totals \$362.30 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of \$2,343.81, which also reflects the \$102.75 tenant account credit deducted. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: February 4, 2019

Residential Tenancy Branch