



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FRASER MARINE DRIVE HOLDINGS
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPM FFL MNDCL-S

Introduction

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

- an Order of Possession for a mutual agreement to end the tenancy, pursuant to section 55;
- a monetary order money owed or compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 .

While the landlord's agent, VP ("landlord"), attended the hearing by way of conference call, the tenant did not. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

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.

The landlord's agent testified that the tenant was served with the landlord's application for dispute resolution hearing package and amendment by way of registered mail on March 8, 2019, and the landlord's evidence package by way of registered mail on March 27, 2019. The landlord provided Canada Post tracking numbers in their evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant deemed served with the landlord's application on March 13, 2019 and the landlord's

evidence package on April 1, 2019, five days after its registered mailing. The tenant did not submit any written evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent and losses?

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

Background and Evidence

The landlord's agent provided the following, sworn undisputed testimony during the hearing. This month-to-month tenancy began on March 1, 2011, with monthly rent currently set at \$798.64, payable on the first day of each month. The landlord holds a security deposit in the amount of \$337.50 for this tenancy.

A previous hearing was held on December 21, 2018, where both parties attended, and agreed to mutually end this tenancy effective January 31, 2019. On January 22, 2019, both parties signed a new Mutual Termination Agreement to allow the tenant to stay until 1:00 p.m. on February 28, 2019. The landlord submitted a copy of the Mutual Agreement in their evidence. The landlord testified in the hearing that as of the hearing the date, the tenant has not given vacant possession of the rental unit back to the landlord. The landlord's agent testified that the tenant has not returned any keys, nor has the tenant removed all his personal belongings from the rental unit. The landlord's agent further testified that the tenant has not paid any rent for the months of March and April 2019.

The landlord is seeking an Order of Possession as well as a monetary order for the unpaid rent.

Analysis

The landlord's agent provided undisputed testimony at this hearing as the tenant did not attend. I find the Mutual Agreement submitted in the landlord's evidence to be valid as it is signed by both parties. I accept the agent's testimony that both parties had mutually agreed to end this tenancy on February 28, 2019, but the tenant has failed to give vacant possession back to the landlord. Accordingly, I allow the landlord's application for an Order of Possession.

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I find that the tenant was obligated to pay the rent as per the tenancy agreement and the Act. I find the landlord provided undisputed evidence to support that the tenant has not paid any rent for March and April 2019, nor did they have an order from an Arbitrator allowing them to deduct all or a portion of the rent, nor do I find that the tenant had a right under the Act to deduct or withhold all or portion of the rent. Accordingly, I allow the landlord a monetary order for unpaid rent in the amount of \$1597.28.

As the landlord was successful in their application, I allow the landlord to recover the filing fee for this application.

The landlord continues to hold the tenant's security deposit of \$337.50 In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain tenant's security deposit in satisfaction of the monetary claim.

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 issue a \$1,359.78 Monetary Order in favour of the landlord, which allows the landlord to recover unpaid rent, the filing fee for this application, and also allows the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Item	Amount
Unpaid Rent for March & April 2019	\$1,597.28
Recovery of Filing Fee for this Application	100.00
Security Deposit	-337.50
Total Monetary Order	\$1,359.78

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: April 26, 2019

Residential Tenancy Branch