



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNRL-S OPR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for an order of possession, a monetary order for unpaid rent and reimbursement of the filing fee.

Landlord's representative, LJ appeared on behalf of the landlord. The tenant did not attend although I left the teleconference hearing connection open during the duration of the hearing to enable the tenant to call. I confirmed that the Notice of Hearing provided the correct call-in numbers and participant codes. I also confirmed from the teleconference system that landlord, LJ, and I were the only persons who had called into this teleconference.

The landlord testified that the tenant was each served with the notice of dispute resolution package and the landlords' evidence package by registered mail on March 21, 2019J. The landlord provided the registered mail tracking numbers which are referenced on the first page of this decision. I find that the tenants have been served with the landlord's application and evidence and amendment in accordance with sections 88to 90 of the *Act*.

The landlords served a 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") by posting the notice on the tenant's door on March 6, 2019. The Ten-Day Notice stated unpaid rent of \$2,508.00 with a move out date of March 16, 2019. I find that the tenant has been served with the landlords' Ten-Day Notice in accordance with sections 88 of the *Act*.

Issue(s) to be Decided

re the landlords entitled to an order for possession pursuant to section 55 of the *Act*?

Are the landlords entitled to a monetary order for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The landlord testified that the tenancy started April 1, 2010. Rent was initially \$945.00 payable on the first of each month. The rent later increased to \$1,204.00 in May 2018. The tenant paid a \$472.50 security deposit.

The landlord submitted a rental ledger showing multiple rent payments being rejected by the landlord's bank as having non-sufficient funds. The rent ledger shows that the January 2019, February 2019 and March 2019 rent payments were rejected. The ledger shows that the tenant did subsequently pay the February 2019 rent. However, the ledger shows that the tenant has not paid the January 2019 or March 2019 rent.

The landlord testified that the tenant has not paid any rent since the Ten-Day notice was served. The landlord also testified that the tenant still occupies the rental unit.

The landlords are requesting a monetary order compensation for unpaid rent and \$100.00 for four non-sufficient fund fees.

Analysis

Pursuant to *Residential Tenancy Branch Rules of Procedure* ("RTB Rules"), Rule 6.6 states that the applicant, in this case the landlord, has the onus of proof to prove their case on a balance of probabilities. This means that RTB Rule 6.6 requires the landlord to prove that, more likely than not, the facts occurred as claimed in order to prevail in their claim.

Section 46 of the *Act* states that a landlord may end a tenancy if rent is unpaid after it is due by giving the tenant a ten-day notice to end tenancy. In this matter, the landlord issued a Ten-Day Notice stating unpaid rent of \$2,508.00.

Pursuant to section 46(4) of the *Act*, tenants have five days after receipt of a notice to end a tenancy for unpaid rent to dispute the notice. In this matter, the Ten-Day Notice was served on the tenant by posting the notice on the tenant's door on March 6, 2019. Pursuant to section 90 of the *Act*, the notice is deemed to have been served three days after posting, being March 9, 2019. Accordingly, the tenant had five days after the deemed date of service of March 9, 2019 to dispute the notice. However, the tenant did not file an application to dispute the notice and the deadline to dispute the notice has expired.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Based upon the undisputed testimony of the landlord and the terms of tenancy agreement, I find that the Tenant was obligated to pay the monthly rent in the amount of \$1,204.00, on time and in full each month, up to and including the rental period commencing March 1, 2019. I find that the tenants have not paid the rent for January 2019 and March 2019.

I find the form and content of the Ten-Day Notice does comply with section 52 of the *Act* and the landlord has established on the balance of probabilities that the unpaid rent stated in the Ten-Day Notice was owing as stated in the notice. Accordingly, I find the landlord is entitled to an order of possession effective two days after service on the tenant.

Further, section 71(1) of the *Act* states that "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results." Pursuant to section 71(1), I find the landlord is entitled to a monetary award of \$2,408.00.00 for unpaid rent in January 2019 and March 2019.

Based upon the landlord's undisputed testimony and the rent ledger, I also find that the tenant has incurred four non-sufficient fund fees of \$25.00 for a total of \$100.00.

Residential Tenancy Regulation section 7(2)(d) authorizes landlords to charge non-sufficient fund fees not exceeding \$25.00 per instance. Accordingly, pursuant to section 71(1), I find the landlord is entitled to a monetary award of \$100.00 for unpaid non-sufficient fund fees.

I also find that the Tenant owes \$1,592.40 for overholding the rental unit for the period of April 1, 2019 to May 10, 2019, calculated as described below.

Section 57 of the Act defines an "overholding tenant" as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. The section goes on to say a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

In the case before me, as per the Ten-Day Notice; I find the tenancy ended on March 19, 2019. However, I am satisfied from the landlords' undisputed testimony that the tenants continue to overhold the rental unit up to the date of the hearing on May 10, 2019.

Residential Tenancy Policy Guideline #3 states that tenants are not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the *Act*, however if tenants remain in possession of the premises (overholds), the tenants will be liable to pay occupation rent on a per diem basis until the landlords recovers possession of the premises.

As the tenants remained in the unit for the full rental periods of April 1, 2019 to April 30, 2019, the landlords are entitled to receive a total of \$1,204.00 for overholding that period. In addition, since the tenants remained in the rental unit from May 1, 2019 until the date of the hearing on May 10, 2019, I find that the landlords are entitled to overholding rent in the amount of \$388.40 (ten days at the per diem rate of \$38.84) for May 2019.

Based on the undisputed testimony of the landlord and the tenancy agreement, I find that the landlord holds a security deposit of \$472.50 which may be deducted from the damages owed by the tenants pursuant to section 72(2)(b) of the *Act*.

In addition, since the landlord has been successful this matter, I award the landlords \$100.00 for recovery of the filing fee which may also be deducted from the security deposit pursuant to section 72(2)(b) of the *Act*.

Accordingly, I find that the landlords are entitled to a monetary order of \$3,772.90, calculated as follows.

<u>Item</u>	<u>Amount</u>
January 2019 rent unpaid	\$1,204.00

March 2019 rent unpaid	\$1,204.00
NSF cheque fees	\$100.00
April 2019 overholding damages	\$1,204.00
May 2019 overholding damages	\$388.40
Less security deposit	-\$472.50
Filing fee	\$100.00
Total	\$3,772.90

Conclusion

I find the landlords are entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenants. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I grant the landlords a monetary order in the amount of **\$3,772.90**. If the tenants fail to comply with this order, the landlord may file the order in the Provincial Court to be 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: May 10, 2019

Residential Tenancy Branch