



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HULL INVESTMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, MNDCL-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 and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The three tenants, "tenant ALW," "tenant APW" and "tenant DM" did not attend this hearing, which lasted approximately 17 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 she had permission to speak on behalf of the landlord company named in this application as an agent. The landlord provided a signed, written authorization to this effect.

The hearing began at 1:30 p.m. with only me present. The landlord called in late at 1:35 p.m. The hearing ended at 1:47 p.m.

The landlord testified that the three tenants were each served with the landlord's application for dispute resolution hearing package on June 22, 2019, by way of registered mail. The landlord provided three Canada Post tracking numbers verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that all three tenants were deemed served with the landlord's application on June 27, 2019, five days after their registered mailings.

The landlord confirmed that she witnessed her colleague personally serve tenant DM with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 7, 2019 ("10 Day Notice"), on the same date. The effective move-out date on the notice is June 17, 2019. In accordance with section 88 of the *Act*, I find that all three tenants were served with the landlord's 10 Day Notice on June 7, 2019.

At the outset of the hearing, the landlord confirmed that she was not seeking a monetary order for August 2019 loss of rent of \$1,450.00. She claimed that since the hearing was in July 2019, she did not require the August rent. Accordingly, this application is dismissed with leave to reapply.

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 tenants' 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 relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on December 1, 2013. Monthly rent in the amount of \$1,450.00 is payable on the first day of each month. A security deposit of \$725.00 was paid by the tenants and the landlord continues to retain this deposit. No written tenancy agreement was signed by the parties. The tenants continue to reside in the rental unit.

The landlord seeks an order of possession based on the 10 Day Notice. The landlord issued the 10 Day Notice for unpaid rent of \$9,700.00 due on June 1, 2019. The landlord testified that the tenants failed to pay rent of \$1,000.00 for December 2018 and \$1,450.00 for each month from January to July 2019, totaling \$11,150.00. The landlord

seeks a monetary order of \$11,150.00 for unpaid rent plus the \$100.00 application filing fee.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the full rent due on June 1, 2019, within five days of receiving the 10 Day Notice. The tenants have not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of the above actions within five days led to the end of this tenancy on June 17, 2019, the effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by June 17, 2019. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, 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 tenants 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 tenants who do not comply with the *Act*, *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 tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenants failed to pay rent of \$11,150.00 from December 2018 to July 2019. Accordingly, I find that the landlord is entitled to rental arrears of \$11,150.00 from the tenants.

The landlord continues to hold the tenants' security deposit of \$725.00. 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 tenants' entire security deposit of \$725.00 in partial satisfaction of the monetary award.

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

Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenants. Should the tenants 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 tenants' entire security deposit of \$725.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$10,525.00 against the tenants. The tenants must be served with this Order as soon as possible. Should the tenants 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.

The landlord's application for rent of \$1,450.00 for August 2019, is dismissed with leave to reapply.

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: July 15, 2019

Residential Tenancy Branch