



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Properties Limited and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on September 23, 2019. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- a monetary order for unpaid rent or utilities.

The landlord's agent (the agent) attended the hearing and provided testimony. The tenant did not attend the hearing. The agent testified that the application package, along with his supporting evidence was hand delivered to the tenant on July 25, 2019. I find the tenant was sufficiently served with this package on July 25, 2019.

The agent has requested to amend his application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

In consideration of this, I hereby amend the agent's application accordingly. The agent was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
4. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The agent stated that monthly rent is \$1,732.00 and is due on the first of the month. The agent holds a security deposit of \$812.50.

The agent testified that the tenant has a history of missed rent payments. The agent provided detailed testimony with respect to what payments have been made since June 2019.

The agent provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), which was attached to the Tenant's door on July 2, 2019. The 10 day Notice specified that the tenant owed \$1,907.00 in rent at that time. The agent clarified what the Tenant owes, and has paid, as follows:

Date	Item	Amount Due	Amount Paid	Accrued Balance Owing
June 2019	Unpaid balance from June	\$175.00		\$175.00
July 1, 2019	Rent Due + late fee of \$25	\$1,757.00		\$1,957.00
July 16, 2019	Rent Payment		\$700.00	\$1,257.00
July 17, 2019	Rent Payment		\$700.00	\$557.00
August 1, 2019	Rent Due + late fee of \$25	\$1,757.00		\$2,314.00
August 12, 2019	Rent Payment		\$600.00	\$1,714.00
August 13, 2019	Rent Payment		\$900.00	\$814.00
September 1, 2019	Rent Due + late fee of \$25	\$1,757.00		\$2,571.00
September 4, 2019	Rent Payment		\$500.00	\$2,071.00
September 16, 2019	Rent Payment		\$1,000.00	\$1,071.00
Total Accrued Balance				\$1,071.00

Analysis

Based on the unchallenged testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenant had a balance of unpaid rent at the time the 10 Day Notice was issued. On July 2, 2019, the 10 Day Notice was posted to the Tenant's door. Pursuant to section 88 and 90 of the *Act*, I deem this Notice was served to the Tenant on July 5, 2019.

The tenant had 5 days to pay rent in full or file an application for dispute resolution. I find no evidence that the tenant did either. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The agent is entitled to an order of possession, which will be effective two (2) days after it is served on the tenant.

With respect to the agent's request for a monetary order for unpaid rent, I find there is sufficient evidence from the agent's testimony and evidence to demonstrate that the tenant owes and has failed to pay rent, as laid out above, leaving a balance owing of \$1,071.00.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the agent was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the agent, be kept and used to offset the amount of rent still owed by the tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent	\$1,071.00
Other:	
Filing fee	\$100.00
Less:	
Security Deposit currently held by Agent	(\$812.50)
TOTAL:	\$358.50

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. 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.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$358.50**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and 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: September 23, 2019

Residential Tenancy Branch