



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THUAN PHUOC HOLDDING
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, OPR, FFL

Introduction

On August 8, 2019 the Landlord submitted an Application for Dispute Resolution (the “Application”), seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- a monetary order for unpaid rent or utilities;
- an order granting authorization to retain the security deposit;
- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 11:00 A.M. on October 3, 2019 as a teleconference hearing. The Landlord’s Agents appeared and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord’s Agents and I were the only persons who had called into this teleconference.

The Landlord’s Agents testified the Application and documentary evidence package was served to the Tenant in person on August 8, 2019. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on August 8, 2019. The Tenant did not submit documentary evidence in response to the Application.

The Landlord’s Agents were given an 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 a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Should the Landlord be authorized to apply the security deposit against their claim, in accordance with Section 38 and 72 of the *Act*?
3. Is the Landlord entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?
4. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord's Agents were uncertain as to when the tenancy began, however estimate that the Tenant has maintained his tenancy for approximately five years. The Landlord's Agents stated that they took possession of the residential property in 2017. The Landlord's Agents stated that the Tenant is required to pay rent in the amount of \$385.00 which is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$192.00, which the Landlord continues to hold. The Landlord's Agents stated that the Tenant continues to occupy the rental unit.

The Landlord's Agents testified the Tenant did not pay rent when due in June and July 2019 in the amount of \$770.00. Subsequently, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 25, 2019 (the "10 Day Notice"). The Landlord's Agents stated that the 10 Day Notice was served to the Tenant in person on July 25, 2019.

The Landlord's Agents testified that they received rent payments from the Tenant in the amount of \$385.00 on August 1, 2019, as well as \$385.00 on September 1, 2019. The Landlord's Agents testified that the Tenant failed to pay rent when due for October 1, 2019 as well. The Landlord is seeking a monetary order in the amount of \$1,155.00 for unpaid rent for June, July, and October 2019. The Landlord is also seeking an order of possession based on the unpaid rent. If successful, the Landlord is seeking the return of the filing fee paid to make the Application.

As noted above, the Tenant did not attend the hearing to dispute the Landlord's evidence.

Analysis

Section 26 of the Act explains that the 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. As I do not have any evidence before me that the

Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act.

Section 46 of the *Act* states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I find based on the Landlord's uncontested testimony that the Landlord served the 10 Day Notice dated July 25, 2019 to the Tenant in person on July 25, 2019. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received on the same date. I find the Tenant is deemed to have received the 10 Day Notice on July 25, 2019.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenant had until July 30, 2019 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I accept the Landlord's undisputed testimony that after service of the 10 Day Notice, the Tenant failed to pay the remaining balance of rent owing in the amount of \$770.00 for June and July 2019 rent, and has also failed to pay rent when due for October 2019. As the Tenant did not pay all the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me that the Tenant disputed the 10 Day Notice, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice, pursuant to section 46(5) of the *Act*.

I find that the 10 Day Notice does not provide an effective date of the Notice. Under Section 53 of the *Act*, incorrect effective dates automatically change to comply with the *Act*. As such, the 10 Day Notice has a corrected effective vacancy date of August 4, 2019.

I find that the 10 Day Notice complies with the requirements for form and content. As such I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the *Act*. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

In light of the above, I find the Landlord has established an entitlement to a monetary award for unpaid rent for the month of June, July, and October 2019 in the amount of \$1,155.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$1,063.00, which has been calculated as follows:

| Claim | Amount |
|-------------------------------|-------------------|
| Unpaid rent: | \$1,155.00 |
| Filing fee: | \$100.00 |
| <i>LESS</i> security deposit: | <i>-\$192.00</i> |
| TOTAL: | \$1,063.00 |

Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$1,063.00. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: October 04, 2019

Residential Tenancy Branch