



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GLASSMAN INVESTMENTS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: OPR-DR-PP MNR-DR FFL
For the tenant: CNR-MT OLC RP LRE

Introduction

This hearing was convened as a result an Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) by both parties. The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order unpaid rent or utilities, for authorization to keep all or part of the security deposit, and to recover the cost of the filing fee. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 15, 2021 (10 Day Notice), for more time to file an application to cancel a 10 Day Notice, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for regular repairs to the unit, site or property, and for an order to suspend or set conditions on the landlord's right to enter the rental unit, site or property.

An agent for the corporate landlord, KY (agent) and the resident manager, MP (manager) attended the teleconference hearing. The tenant did not attend the hearing. As the tenant did not attend the hearing to present the merits of their application, the tenant's application was **dismissed, without leave to reapply**, after the 10-minute waiting period had elapsed pursuant to Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rules 7.1 and 7.3. The hearing continued with consideration of the landlord's application.

The hearing process was explained to the agent and manager, and the agent and manager were given an opportunity was given to ask questions about the hearing process. Thereafter the agent and manager gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to

the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The agent testified that they served the tenant by registered mail at the rental unit address on August 20, 2021 and that the tenant continues to occupy the rental unit as of the date of this hearing, November 29, 2021. I have reviewed the tracking number submitted in evidence, which has been included on the style of cause for ease of reference. According to the online Canada Post registered mail tracking website, the tenant signed for accepted the registered mail package on August 24, 2021. As a result of the above, I find the tenant was sufficiently served on August 24, 2021, which was the date the tenant was successfully served.

I have reviewed all evidence before me that met the requirements of the RTB Rules. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

The agent and manager were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The agent and manager were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the agent and manager were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither the agent nor the manager had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the agent confirmed the email addresses of the landlord and tenant at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to the landlord and that the decision would be emailed to the tenant.

The agent testified that in addition to the rent owed as claimed in the original application, the tenant has subsequently not paid the rent for September, October and November 2021. As a result, the landlord requested to amend the application to include rent owed in the amount of \$6,818.00 which is comprised of August, September, October and November of 2021, less a \$2.00 credit on file. The landlord also stated that the tenant continues to occupy the rental unit. I find that this request to amend the

application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application pursuant to section 64(3)(c) of the Act, from \$3,698.00 to \$6,818.00, before the filing fee.

Issues to be Decided

- Is the landlord entitled to an order of possession under the Act?
- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on December 1, 2017 and reverted to a month-to-month tenancy after December 30, 2018. Currently, monthly rent in the amount of \$1,705.00 is due on the first day of each month. The tenant paid a security deposit of \$800.00 at the start of the tenancy, which the landlord continues to hold and has accrued no interest to date under the Act.

The landlord's monetary claim of \$6,818.00 is comprised of the following:

Item 1	Unpaid August 2021 rent	\$1,705.00
Item 2	Unpaid September 2021 rent	\$1,705.00
Item 3	Unpaid October 2021 rent	\$1,705.00
Item 4	Unpaid November 2021 rent	\$1,705.00
	<i>Less \$2.00 credit on file</i>	<i>-(\$2.00)</i>
	TOTAL	\$6,818.00

Regarding items 1 to 4, the agent stated that the tenant has failed to pay \$1,705.00 in rent as described above. The agents stated that including the \$2.00 credit on file for the tenant, the tenant owes \$6,818.00 as described above.

The agent testified that the 10 Day Notice was posted to the tenant's door on July 15, 2021 and had an effective vacancy date of July 25, 2021. The agent stated that the tenant continues to occupy the rental unit and that the landlord is seeking an order of possession and a monetary order for unpaid rent, plus the filing fee. The agent also

stated that they want to offset any amount owing with the tenant's security deposit of \$800.00.

Analysis

Based on the undisputed testimony of the agent and the undisputed documentary evidence before me, and on the balance of probabilities, I find the following.

Order of possession – Pursuant to section 55(1) as I have dismissed the tenant's application and find that the 10 Day Notice complies with section 52 of the Act, I must grant the landlord an order of possession. Section 53 of the Act automatically corrects the effective vacancy date from July 25, 2021 to July 28, 2021, as the 10 Day Notice was posted to the door and section 90 of the Act deems that documents are served 3 days after they are posted to the rental unit door. **Therefore, I find the tenancy ended on July 28, 2021. I grant the landlord an order of possession effective two (2) days after service on the tenant.**

Monetary claim – I accept the agent's undisputed testimony that the tenant continues to occupy the rental unit and owes a total of **\$6,818.00** in unpaid rent as claimed. Therefore, I find the tenant breached section 26 of the Act that requires that \$1,705.00 in rent be paid on the first day of each month.

As the landlord's application is fully successful, I grant the landlord the **\$100.00** filing fee pursuant to section 72 of the Act for a total amount owing by the tenant to the landlord of **\$6,918.00**.

In addition to the above, I find the 10 Day Notice was undisputed by the tenant as the tenant failed to attend the hearing to dispute the 10 Day Notice and continues to occupy the rental unit.

The landlord continues to hold the tenant's security deposit of \$800.00 which has not accrued interest since the start of the tenancy. The landlord requested to offset their claim with the tenant's security deposit.

I authorize the landlord to retain the tenant's full security deposit of \$800.00 in partial satisfaction of the landlord's monetary claim pursuant to sections 62(3) and 38 of the Act. **I grant** the landlord a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of **\$6,118.00**. This order must

be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I caution the tenant not to breach section 26 of the Act in the future.

Conclusion

The tenant's application was dismissed in full, without leave to reapply as the tenant did not attend the hearing to present the merits of their application.

The landlord's application is fully successful. The tenancy ended on July 28, 2021. The landlord has been granted an order of possession effective two (2) days after service on the tenant. Should the landlord require enforcement of the order of possession, the landlord must first serve the tenant with the order of possession. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord has established a total monetary claim of \$6,918.00 and has been authorized to retain the tenant's full security deposit of \$800.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of \$6,118.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The tenant is cautioned that they can be held liable for all costs related to enforcing both court orders. This decision will be emailed to both parties. The orders will be emailed to the landlord only for service on the tenant as required.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 29, 2021

Residential Tenancy Branch