



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, MNDCL, FFL; CNR, RR, LRE, LAT, RP,
 OLC, FFT

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 of \$2,741.50 for unpaid rent and for compensation under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the \$100.00 filing fee paid for its application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 8, 2022 ("10 Day Notice"), pursuant to section 46;
- an order allowing the tenant to reduce rent of \$1,414.50 for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70;
- authorization to change the locks to the rental unit, pursuant to section 70;
- an order requiring the landlord to complete repairs to the rental unit, pursuant to section 32;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the \$100.00 filing fee paid for his application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 39 minutes. The landlord's two agents, "landlord KS" and "landlord PP," attended the hearing and were

each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began at 9:30 a.m. with me and landlord KS present. Landlord PP called in late at 9:39 a.m. The hearing ended at 10:09 a.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's two agents and I were the only people who called into this teleconference.

The landlord's two agents confirmed their names and spelling. Landlord KS provided his email address for me to send this decision to the landlord after the hearing.

The landlord's agent stated that he was a regional manager for the landlord company ("landlord") named in this application. He said that the landlord owns the rental unit and provided the rental unit address. He confirmed that he had permission to represent the landlord at this hearing. He explained that the individual landlord named in the tenant's application was a former property manager for the landlord.

Landlord PP confirmed that he was the building manager for the landlord and that he had permission to represent it at this hearing.

At the outset of this hearing, I informed the landlord's two agents that they were not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*"). The landlord's two agents both separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to the landlord's two agents. They had an opportunity to ask questions, which I answered. They confirmed that they were ready to proceed with this hearing. They did not make any adjournment or accommodation requests.

Landlord KS stated that the tenant was served with the landlord's application for dispute resolution, notice of hearing, first evidence package, and amendment on February 10, 2022, by way of registered mail. The landlord provided a Canada Post receipt and landlord KS confirmed the tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application, amendment, and first evidence package on February 15, 2022, five days after its registered mailing.

Landlord KS stated that the tenant was served with the landlord's six-page second evidence package on March 23, 2022, by registered mail, and on March 25, 2022, by way of posting to the tenant's rental unit door. In accordance with sections 88 and 90 of the Act, I find that the tenant was deemed served with the landlord's second evidence package on March 28, 2022, five days after its registered mailing and three days after its posting. I informed the landlord's two agents that I could not consider the landlord's second evidence package at this hearing or in my decision because it was deemed served late on March 28, 2022, less than 14 days prior to this hearing on April 11, 2022, not including the service or hearing dates, contrary to Rule 3.14 of the RTB *Rules*.

Landlord KS confirmed that the tenant was served with the landlord's 10 Day Notice on January 8, 2022. The landlord provided a signed, witnessed proof of service with its application. In accordance with sections 88 and 90 of the Act, I find that the tenant was deemed served with the landlord's 10 Day Notice on January 11, 2022, three days after its posting. The tenant indicated in his application that he received the 10 Day Notice on January 7, 2022, by way of posting to his door.

Preliminary Issue - Amendments

Pursuant to section 64(3)(c) of the Act, I amend the tenant's application to remove the name of the individual landlord, as she is the landlord's former property manager, and she does not own the rental unit. I have indicated the landlord company name as the sole landlord in the tenant's application, as it owns the rental unit, as per landlord KS. I find no prejudice to either party in making this amendment.

Pursuant to section 64(3)(c) of the Act, I amend the landlord's application to increase the landlord's monetary claim to include rent, parking, NSF, and insurance fees from January to April 2022. The tenant is aware that rent is due on the first day of each month. The tenant is also aware that parking, insurance, and NSF charges are also due on the first day of each month, as per the parties' written tenancy agreement. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required him to vacate earlier for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay his rent, the landlord would pursue all unpaid rent at this hearing. Further, landlord KS confirmed that the tenant was served with the landlord's amendment, which states the above additional charges, together with the landlord's original application. For the above reasons, I find that the tenant had appropriate notice of the landlord's claims for increased rent, insurance, parking and NSF fees, despite the fact that he did not attend this hearing.

Preliminary Issue – Dismissal of Tenant's Application

Landlord KS stated that the landlord did not receive a copy of the tenant's application for dispute resolution hearing package. He said that he found out about the tenant's application from the RTB, that informed him that the tenant's application was being heard together with the landlord's application at this hearing.

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to an order of possession, provided that the notice meets the requirements of section 52 of the *Act*.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent and for compensation under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to recover the filing fee for its application?

Background and Evidence

Landlord KS stated the following facts. This tenancy began on January 7, 2020. Monthly rent in the amount of \$1,319.50 is payable on the first day of each month. A security deposit of \$650.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

Landlord KS stated that the monthly rent was increased, effective January 1, 2022, pursuant to a Notice of Rent Increase, dated September 21, 2021 ("NRI"). He said that

this notice was served to the tenant on the same date, by way of posting to his rental unit door. He stated that the rent was increased from \$1,300.00 to \$1,319.50, an increase of \$19.50, which is 1.5% as allowed under the RTB *Regulation* amount. A copy of the NRI was provided for this hearing.

The landlord seeks an order of possession for unpaid rent based on the 10 Day Notice. Landlord KS confirmed that the 10 Day Notice was issued for unpaid rent of \$1,319.50, due on January 1, 2022.

Landlord PP claimed that the tenant failed to pay rent of \$1,319.50 per month for January and April 2022, totalling \$2,639.00. He stated that the tenant also failed to pay \$20.00 for insurance, \$25.00 for parking, and \$25.00 for an NSF fee for April 2022. He said that the tenant failed to pay \$7.50 for insurance in January 2022. Landlord KS said that the tenant failed to pay an NSF fee of \$25.00 for November 2021, as noted on the landlord's monetary order worksheet. The landlord seeks a monetary order of \$2,741.50 for the above unpaid amounts and to recover the \$100.00 filing fee paid for the landlord's application.

Landlord PP said that the tenant paid \$1,452.00 on February 22, 2022, which includes \$1,319.50 for rent, \$25.00 for parking, \$20.00 for insurance, and \$25.00 for an NSF fee, for February 2022. He stated that the above also includes \$25.00 for an NSF fee, \$25.00 for parking, and \$12.50 for insurance for January 2022.

Landlord PP stated that the tenant paid \$1,364.50 on March 1, 2022, which includes \$1,319.50 for rent, \$25.00 for parking, \$20.00 for insurance for March 2022.

Landlord KS stated that the NSF late fees are \$25.00 as per clause 7 and parking fees are \$25.00 as per clause 6 of the tenancy agreement. He said that the insurance fees were originally \$15.00 as per clause 6 of the tenancy agreement, but they were increased to \$18.00 in March 2020 and \$20.00 in January 2021, as per the insurer, which controls the amounts. He said that these charges are reflected in the landlord's rent ledger that was provided for this hearing.

Analysis

The landlord provided undisputed evidence, as the tenant did not attend this hearing. The tenant failed to pay the full rent due on January 1, 2022, within five days of receiving the 10 Day Notice. The tenant filed an application to dispute the notice,

pursuant to section 46(4) of the *Act*. However, the tenant did not appear at this hearing in order to provide his evidence.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days led to the end of this tenancy on January 21, 2022, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by January 21, 2022. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

I find that the landlord did not waive its right to pursue the 10 Day Notice against the tenant by accepting rent payments after the effective date of the notice. The tenant has not yet paid the \$1,319.50 rent due on the notice from January 2022, nor has he paid for April 2022 rent. The landlord continued to pursue its application for an order of possession against the tenant at this hearing. The landlord did not withdraw its 10 Day Notice against the tenant. Further, I accept landlord KS's testimony that the tenant was issued "use and occupancy only" receipts for the rent payments made by the tenant in February and March 2022.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month, in this case. I accept the undisputed, affirmed testimony of landlord KS and the NRI provided by the landlord for this hearing, that the monthly rent was legally increased from \$1,300.00 to \$1,319.50, as per the allowable *Regulation* amount of 1.5%, effective January 1, 2022. I find that the tenant was deemed served with the NRI on September 24, 2021, three days after its posting on September 21, 2021. The tenant has been paying the above increased monthly rent amount, as per landlord KS's undisputed, affirmed testimony regarding the rent paid in February and March 2022.

The landlord provided undisputed evidence that the tenant failed to pay rent totalling \$2,639.00 for January and April 2022. Therefore, I find that the landlord is entitled to a monetary order of \$2,639.00 in unpaid rent from the tenant.

Although this hearing occurred on April 11, 2022, I find that the landlord is entitled to one full month's rent for April 2022 of \$1,319.50. I accept the testimony of landlord KS that the landlord has not taken back possession of the unit and the tenant is still residing there. Moreover, rent is due on the first day of each month, as per the landlord's evidence and tenancy agreement.

Section 7 of the *Residential Tenancy Regulation* states the following, in part:

Non-refundable fees charged by landlord

7(1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I find that the landlord provided undisputed evidence that the tenant failed to pay NSF fees to the landlord in the amount of \$25.00 for each of November 2021 and April 2022, totalling \$50.00. Accordingly, I award the landlord \$50.00 total for NSF fees, since the tenant's pre-authorized debit rent payments were returned as dishonoured, as per the landlord's rent ledger and the testimony of landlord KS at this hearing. The \$25.00 fee is indicated in the parties' written tenancy agreement at clause 7 on page 2 of the "arrears" section.

I find that the landlord provided undisputed evidence that the tenant failed to pay \$25.00 for parking for April 2022, \$20.00 for insurance for April 2022, and \$7.50 for insurance for January 2022. Accordingly, I award the landlord \$52.50 for the above unpaid amounts, as they are provided for in clause 6 on page 1 of the parties' written tenancy agreement. I accept landlord KS's undisputed affirmed testimony that the current charges for insurance are now \$20.00, not \$15.00, as per the original tenancy agreement.

The landlord continues to hold the tenant's security deposit of \$650.00. Over the period of this tenancy, no interest is payable on the deposit. Although the landlord did not apply to retain this deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$650.00 in partial satisfaction of the monetary award.

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

The landlord is provided with a monetary order of \$2,841.50 for the unpaid rent, parking, insurance, NSF fees, and the filing fee. The security deposit of \$650.00 is deducted

from the above amount, leaving a balance of \$2,191.50. The landlord is provided with a monetary order for \$2,191.50 against the tenant.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. The tenant must be served with this Order as soon as possible. Should the tenant 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 tenant's entire security deposit of \$650.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlords' favour in the amount of \$2,191.50 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant 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.

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: April 11, 2022

Residential Tenancy Branch