



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOUNDARY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR MNR MNSD FF

Introduction

This hearing dealt with an application by the landlords pursuant to the *Residential Tenancy Act* for orders as follows:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to keep all or part of the tenants' security deposit pursuant to section 38; and
- authorization to recover the filing fee from the tenants for the cost of this application pursuant to section 72.

The tenants did not attend. The landlord's representative ("the landlord") was given full opportunity to be heard, to present evidence and to make submissions. The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice") was personally served to the tenant on May 6, 2015. The landlord gave sworn testimony that the tenant was personally served with the Application for Dispute Resolution hearing package including Notice of Hearing on May 25, 2015. I accept that the tenant was duly served with the 10 Day Notice and the Application for Dispute Resolution hearing package.

The landlord also testified that Tenant RB named in this application is the only tenant party to the rental agreement. She testified that the other party named in this application has been authorized as an occupant but is not a party or a signatory to the rental agreement. She withdrew her claim with respect to this other party.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent and losses arising out of this tenancy?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord gave evidence that the rental agreement for the rental premises began on January 1, 2015. The rental amount for this unit was established at \$1250.00 payable on the first of each

month. The landlord testified that she continued to hold the \$625.00 security deposit that the tenant paid on June 16, 2014. She testified that the tenant and his roommate continue to reside in the rental unit.

The landlord has applied for an Order of Possession for unpaid rent for the months of February, March, April and May 2015. The landlord testified that the tenant did not pay rent of \$1250.00 due on May 1, 2015. The landlord testified that the tenant often paid rent late or in partial payments over the course of each month. She testified that the tenant has been accruing rental arrears by not paying the full amount of his rent each month.

The landlord testified that the tenant did not pay full rent in February, March, April or May of 2015. The landlord testified that the tenant has not paid full rent for June or July since the landlord filed this application. The landlord also testified that the tenant made two payments since the date of this application in June and July 2015. The landlord provided undisputed testimony that it was made clear to the tenant that the tenancy was not reinstated by his payment. The landlord testified that the tenant owes rental arrears totalling over \$4000.00. The landlord submitted an accounting of the tenant's rental payments and non-payment up to and including May 2015. Due to an administrative difficulty during the hearing, at no fault of the landlord's representative, she was unable to confirm the exact amount of the tenant's rental arrears outstanding as of the date of this hearing.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did not pay the May 2015 rent after receiving the 10 Day Notice on May 6, 2015. The landlord testified that the tenant has also not paid his outstanding rental arrears as of the date of this hearing. The landlord sought an Order of Possession for unpaid rent.

The landlord also sought a monetary award of \$4117.50 in the original application. She testified that the tenant has made two payments since that date but she was unable to confirm the exact amount of those payments. She testified that the tenant had paid no rent for July 2015 but was unable to confirm the exact outstanding amount of arrears owed by the tenant.

Analysis

The tenant failed to pay the May 2015 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. The tenant has not attended this hearing to dispute the claim by the landlords. In accordance with section 46(5) of the *Act*, the tenant's failure act within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by May 16, 2015. As that has not occurred, I find that the landlords are entitled to a 2 day Order of Possession.

Based on the candid testimony of the landlord's representative with respect to some payments made by the tenant towards his outstanding rent, I find that the landlord has been clear with the

tenant that the tenancy is not reinstated. However, I do not find that the landlord has met their burden in providing sufficient proof with respect to the exact amount of rental arrears owed by the landlord. I find the landlord is not entitled to a monetary order at this time. I also find that this lack of information to provide at this hearing was not as a result of negligence or failure to sufficiently document the tenant's rental payments. While the landlords are not entitled to a monetary order at this time, I dismiss the landlords' application for a monetary order for unpaid rent and their application to retain the security deposit in partial satisfaction of any order or award with leave to reapply.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for this application. The landlord testified that she continues to hold a security deposit of \$625.00 plus any interest from June 16, 2014 to the date of this decision for this tenancy. There is no interest for this period of time. I will allow the landlord to deduct \$50.00 from the tenant's security deposit in satisfaction of the award for the filing fee for this application.

Conclusion

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I dismiss the landlord's application for a monetary order for unpaid rent and to retain the security deposit with leave to reapply.

I order the landlord to deduct \$50.00 from the tenant's \$625.00 security deposit to recover the cost of the filing fee for this application. The tenant's security deposit will be reduced to \$575.00.

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 14, 2015

Residential Tenancy Branch

