



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOLLYBURN ESTATES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, parking and late fees, and loss of rent. The landlord also applied for authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord submitted a registered mail receipt, including tracking number, as proof the hearing documents and evidence was sent to the tenant at the rental unit via registered mail on July 24, 2015. The registered mail was successfully delivered to the tenant on August 5, 2015. I was satisfied the tenant was sufficiently served with the hearing package, including evidence, and I continued to hear from the landlord without the tenant present.

The landlord submitted a second evidence package that included an updated accounting of the amounts owed for August and September 2015 that was also sent to the tenant via registered mail on September 17, 2015. The landlord submitted that the tenant was seen moving furniture out of the rental unit on September 20, 2015; however, the tenant has not yet returned the keys to the landlord. A search of the second registered mail tracking number showed that Canada Post left a notice card for the tenant on September 21, 2015 and that the registered mail has not been picked up yet. Based upon what I had been presented, I was unsatisfied the tenant was residing at the rental unit when the notice card was left on September 21, 2015 and I did not further consider the documentary evidence included in the second submission. However, I noted that the landlord had indicated in its Application that it was seeking loss of rent for the months of August and September 2015 and I did consider those claims and heard oral testimony with respect to those claims.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to recover unpaid rent, loss of rent, parking and late fees from the tenant as claimed?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced on March 27, 2015 and the tenant paid a security deposit of \$527.50. The tenant was required to pay rent of \$1,055.00 for a 12 month fixed term. The tenant was also required to pay \$30.00 for parking on the 1st day of every month under a parking agreement that could be ended with one month's notice. The tenancy agreement provides for a late fee of \$15.00 if rent is paid after the 3rd day of the month and \$25.00 if rent is paid after the 5th day of the month.

I heard that the tenant requested a second parking space after the tenancy commenced and that the tenant was required to pay \$15.00 for the second parking space; however, I noted that a parking agreement was not included in the evidence package for the second parking stall. The landlord testified that the tenant did give up the first parking space and the landlord was not seeking the \$30.00 parking charge for August 2015.

The tenant failed to pay rent or parking for July 2015 and the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on July 7, 2015 (the Notice). The Notice indicates the tenant failed to pay rent of \$1,055.00 and there is a notation on the Notice that the tenant also owes \$45.00 for parking and a \$25.00 late fee. The Notice has a stated effective date of July 17, 2015.

The landlord testified that the tenant did not pay any monies toward the arrears for July 2015, did not pay anything for August or September and continued to occupy the rental unit through September 2015.

The landlord has not yet verified that the tenant has vacated the rental unit and seeks an Order of Possession in the event she has not.

The landlord applied for a Monetary Order for unpaid rent of \$1,055.00 for July 2015 along with a \$30.00 parking charge for July 2015 and a late fee of \$25.00 for July 2015. The landlord also applied for loss of rent and late fees for August and September 2015.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the evidence before me that the landlord posted a 10 Day Notice on the door of the rental unit on July 7, 2015. Pursuant to section 90 of the Act it is deemed to be received by the tenant three days later or July 10, 2015 in the absence of evidence to the contrary. Accordingly, I find the effective date of the Notice automatically changes to read July 20, 2015 to section 46 and 53 of the Act

I accept the undisputed evidence of the landlord that the tenant did not pay the outstanding rent and she did not dispute the Notice within five days of receiving the Notice. Therefore, I find the tenancy ended on July 20, 2015 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession that the landlord may serve and enforce in the event the tenant has not already vacated the rental unit. The Order of Possession is effective two (2) days after service.

Upon review of the tenancy agreement and parking agreement I find the landlord is entitled under the Act and the Regulations to collect rent for July 2015 in the amount of \$1,055.00 and a parking fee of \$30.00. I also find the late fee clause compliant with the Regulations and I find the landlord entitled to a late fee of \$25.00 for July 2015.

The landlord did not include a parking agreement for the \$15.00 parking stall as evidence and did not indicate it was claiming parking for this stall in filing its Application. Therefore, I make no award for the parking charge of \$15.00 for July, August or September 2015.

With respect to the months of August and September 2015 I find the landlord entitled to recover loss of rent from the tenant since she violated the Act by not ending the tenancy in manner that complies with the Act and did not vacate the rental unit by the effective date of the 10 Day Notice and her continued over-holding caused the landlord to incur loss of revenue for these months. As such, I award the landlord loss of revenue for August and September 2015 in the amount of \$1,055.00 for each month. I do not award the landlord late fees for August or September 2015 as the tenancy agreement with the tenant came to an end in July 2015.

Since the landlord was largely successful in its Application, I further award the landlord recovery of the \$50.0 filing fee paid for this Application. I also authorize the landlord to retain the tenant's security deposit in partial satisfaction of the unpaid rent.

In light of the above, I provide the landlord with a Monetary Order calculated as follows:

Unpaid Rent – July 2015	\$1,055.00
Parking – July 2015	30.00
Late fee – July 2015	25.00
Loss of Rent – August 2015	1,055.00
Loss of Rent – September 2015	1,055.00
Filing fee	50.00
Less: security deposit	<u>(527.50)</u>

Monetary Order

\$2,742.50

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord has been provided an Order of Possession effective two days after it is served upon the tenant. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$2,742.50.

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 02, 2015

Residential Tenancy Branch

