Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL R.E.S. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   OPR MNRL FFL

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 for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 10 minutes. The corporate landlord was represented by its agent MP (the "landlord") who was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), dated September 25, 2017 was served on the tenant by registered mail sent on that date. The landlord provided a Canada Post tracking number as evidence of service. 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 September 30, 2017, five days after mailing.

The landlord testified that the landlord's application for dispute resolution dated October 25, 2017 was sent to the tenant by registered mail on that date. The landlord provided a Canada Post tracking number as evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application package on October 30, 2017, five days after its mailing.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed the tenant has made some payment but additional rent has come due and the total arrears including late fees as of the date of the hearing is $3,234.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as the total amount owing changing when subsequent rent becomes due is reasonably foreseeable, I amend the landlord's Application to increase the landlord's monetary claim to $3,234.00.

Issue(s) to be Decided

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

Is the landlord entitled to monetary compensation as claimed?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord provided testimony regarding the following facts. This month-to-month tenancy began in 2001. The current rent is $801.00 payable on the 1st of the month. A security deposit of $297.50 was paid at the start of the tenancy and is still held by the landlord. The tenancy agreement provides that a late fee of $25.00 becomes payable for each monthly rent that is not paid by the due date. The tenant continues to reside in the rental unit at the time of the hearing.

The landlord testified that at the time the 10 Day Notice was issued the tenancy was in arrears by $3,104.00, the amount initially sought in the 10 Day Notice. The landlord testified that the tenant has not paid the arrears amount in full nor have they filed an application to dispute the 10 Day Notice. The landlord has accepted some partial payments from the tenant for use and occupancy only. The landlord submitted into written evidence a copy of the tenant ledger showing the arrears as of the date of the hearing, January 15, 2017, is $3,234.00.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenant was obligated to pay the monthly rent in the amount of $801.00. I accept the evidence before me that the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenant dispute the 10 Day Notice within that 5 day period. Accordingly, I find that the tenant is conclusively

presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, October 10, 2017. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is $3,234.00. I issue a monetary award for unpaid rent and late fees owing of $3,234.00 as at January 15, 2017, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the $100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's $297.50 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I grant an Order of Possession to the landlords effective **2 days after service on the tenants**. Should the tenants 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 issue a monetary order in the landlord's favour in the amount of $3,036.50 under the following terms, which allows the landlords to recover unpaid rent and the filing fee for their application:

Item	Amount
Rent Arrears	$3,234.00
Filing Fee	$100.00
Less Security Deposit	-$297.50
Total Monetary Order	**$3,036.50**

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: January 15, 2018

Residential Tenancy Branch