

DECISION

Dispute Codes OPR, OPC, MND, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55;
- a monetary order pursuant to section 67 for unpaid rent or utilities and damage caused by the tenant to the rental premises; and
- recovery of the filing fee for this application pursuant to section 72.

The tenant did not attend the hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and make submissions. The landlord testified that she handed a 10 Day Notice to End Tenancy for Unpaid Rent to the tenant on June 18, 2010. She testified that she sent the tenant the application for dispute resolution by registered mail on June 25, 2010. She provided the Canada Post Tracking Number. She said that she knew that the tenant received the application for dispute resolution because she discussed the application with the tenant after the tenant received it. I am satisfied that the landlord duly served the 10 Day Notice and the application for dispute resolution hearing package to the tenant in accordance with the *Act*.

The landlord testified that the tenant vacated the rental premises on July 3, 2010. She said that she no longer required the Order of Possession requested in her application for dispute resolution. In that application, she applied for a monetary order of \$2,000.00, which was for the following:

- the tenant's non-payment of rent in June 2010 (\$1,450.00);
- three late payment penalty fees for three returned cheques (3 x \$100.00 = \$300.00); and
- damage to walls and carpets.

At the hearing, the landlord asked that additional costs incurred after she submitted her application for dispute resolution be considered as part of her application. She outlined these total costs of \$5,295.00 in evidence that she submitted to the Residential Tenancy Branch and to the tenant on August 1, 2010. These costs included \$1,500.00 for repairs, \$745.00 for cleaning and moving, and \$1,200.00 for furniture that she maintains the tenant took at the end of the tenancy. She testified that she sent this evidence by registered mail to the tenant's place of work on August 1, 2010. She provided the Canada Post Tracking Number for this registered mail.

Section 88 of the *Act* establishes how documents in a dispute resolution hearing are to be served. Service of documents to a tenant at a tenant's place of work is not allowed under this section unless the tenant has provided the place of work as their forwarding address or unless a Dispute Resolution Officer has issued an order permitting such service delivery. In this case, the landlord did not provide any evidence that section 88 of the *Act* allowed her to serve the tenant with documents at the tenant's place of work. The landlord's attempted service of the evidence of increased costs to the tenant was late.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damage caused by the tenant to the rental premises? Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord testified that this one-year fixed term tenancy agreement commenced on August 15, 2009. Rent was established at \$1,450.00 per month, payable on the 15th of each month. The landlord said that she continues to hold the tenant's \$1,000.00 security deposit plus interest paid on August 15, 2009.

The landlord testified that the last rent she received from the tenant covered the period from May 15, 2010 until June 14, 2010. She testified that she had to repair and clean the rental premises after the tenant vacated on July 3, 2010. She testified that she was able to mitigate the tenant's losses by renting the premises for \$1,500.00 per month as of August 1, 2010.

The landlord submitted evidence that the tenant was late in her rent payments four times during the course of the tenancy (e.g., January 2010, February 2010, May 2010 and June 2010). The landlord noted that section 5 of the signed Addendum to the Residential Tenancy Agreement allowed the landlord to charge \$100.00 each time the tenant was late in her rent payments.

The landlord testified that she attended a move-in inspection with the tenant on August 9, 2009 when the tenant first viewed the rental premises. The tenant did not move into the rental premises until August 16, 2009. She said that she completed a condition inspection report at that time with the tenant. She did not enter this report into evidence. The landlord and her daughter testified that arrangements were made with the tenant a number of times (July 4, 5 and 6, 2010) for a move-out condition inspection with the tenant. On each occasion the tenant was unavailable at the scheduled time. The landlord testified that no move-out condition inspection report with the tenant occurred and no report was completed by the landlord. No move-out condition inspection report was entered into evidence.

The landlord, her daughter and her witness, who conducted maintenance and repair work on the property, testified that the tenant left the rental premises in poor condition when she vacated the property. The landlord provided photographs documenting the condition of the property at the end of the tenancy. The witness gave sworn testimony that he had viewed the property before the tenant moved in and testified that it was in much worse condition when he returned to conduct repairs required after this tenancy. The landlord submitted into evidence receipts from the maintenance employee for

\$745.50 and \$1,680.00 for work performed to restore the premises to their previous condition.

The landlord also testified that the lease included two of the landlord's chairs and a glass table. The landlord said that the tenant took these items from the rental premises. The landlord asked that the monetary order include \$1,200.00, the value of this missing furniture.

Analysis

The landlord's June 24, 2010 application for dispute resolution was for a monetary order of \$2,000.00. Most of this amount was for unpaid rent due on June 15, 2010 (\$1,450.00) and three late payment fees (\$300.00). Although the landlord did not include a figure for damage to walls and carpets in the original application, the amount requested for these damage-related items could not have exceeded \$250.00 at that time, based on the landlord's overall application for a monetary order of \$2,000.00.

In this case, the landlord's application for a monetary award has significantly increased and has extended to areas not included in the original application. I am not satisfied that the landlord has complied with the *Act* in amending her application or in serving notice of her expanded application for a monetary award to the tenant. As set out below, I accept additional expenses that have arisen as a result of the tenant's failure to vacate by the date cited in the Ten Day Notice to End Tenancy and those outlined in the landlord's original application. I do not accept costs in areas that extend beyond the original items requested in the landlord's June 24, 2010 application for dispute resolution.

I grant the landlord a monetary award to recover unpaid and lost rent for these rental premises. I allow the landlord's claim for \$1,450.00 in unpaid rent from June 15, 2010 until July 14, 2010. I accept the landlord's evidence that she needed to repair the premises before she could rent the premises to another tenant. I also accept that the

landlord has taken measures to mitigate the tenant's responsibility for rental loss until the end of the fixed term tenancy on August 14, 2010. In the monetary award, I allow the landlord the difference between her loss of rent for the period from July 15, 2010 until August 15, 2010, and what she received in rent from her new tenant for that period.

I grant the landlord a monetary award for four late payment fees of \$100.00 each.

I accept the evidence presented by the landlord and her witnesses that the walls and carpets were damaged during this tenancy. The landlord provided photographs documenting this damage. The landlord did not provide evidence of completed move-in and move-out condition inspection reports. The absence of this evidence makes it difficult to assess the merits of her claim for damages arising from the tenancy. The tenant was only notified that the landlord was seeking relatively minor recovery of these costs. Based on the testimony provided, I include an allowance of \$500.00 for repair of the damage to the walls in the monetary award. The maintenance worker's \$745.50 receipt of July 10, 2010 does not provide a specific breakdown for repair or cleaning of the carpet, one of the items identified in the landlord's original application. I allow the landlord \$200.00 for the repair of the carpets.

In accordance with the offsetting provisions of section 72 of the *Act*, I authorize the landlord to apply all of the tenants' security deposit plus interest to partially offset the amount of this monetary award. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover her application fee from the tenant. The monetary order is calculated as follows:

Item	Amount
Unpaid Rent June 15- July 14, 2010	\$1,450.00
Landlord's Lost Rent July 15, 2010 - July 31, 2010 (\$1,450.00/2 = \$725.00)	725.00
Less Landlord's Additional Rent from New Lease as of August 1, 2010 (\$1,500.00/2 - \$1,450.00/2 = -\$25.00)	-25.00
Late Payment Fees (4 x \$100.00)	400.00
Damage to Walls and Carpets	700.00
Less Security Deposit	-1,000.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$2,300.00

I make no other allowances in the landlord's monetary order as I am not satisfied that the landlord has complied with the *Act* in her request for a monetary award for these additional items.

Conclusion

I grant the landlord a monetary order in the amount of \$2,300.00 as set out above which includes an allowance for recovery of the landlord's filing fee for this application and retention of the tenant's security deposit in partial satisfaction of this order.

The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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*.