



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Heather Ridge Apts
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, FF

Introduction

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

- an Order of Possession for unpaid rent and for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:42 p.m. in order to enable her to connect with this teleconference hearing scheduled for 1:30 p.m. The female landlord (the landlord) attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she handed the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on March 11, 2013. She also testified that she sent the tenant a copy of the landlords' dispute resolution hearing package by registered mail on March 25, 2013. She entered into written evidence a copy of the Canada Post Tracking Number and Customer Receipt to confirm this registered mailing. She testified that Canada Post returned that package to her as unclaimed on April 17, 2013. In accordance with section 90 of the *Act*, the tenant was deemed served with the dispute resolution hearing package on March 30, 2013, the fifth day after its mailing. I am satisfied that the landlords served the above documents to the tenant in accordance with the *Act*.

At the commencement of the hearing, I asked the landlord to clarify her application for an Order of Possession for Cause as she had entered into written evidence a copy of the 10 Day Notice, but no copy of any 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). The landlord testified that she had not issued a 1 Month Notice to the tenant. She then withdrew her application for an Order of Possession for cause.

The landlord testified that on March 25, 2013, she accepted payment towards this tenancy for all outstanding debts then arising out of this tenancy. However, she testified that she issued a receipt that she had accepted this payment for use and occupancy only and not to continue the tenancy. She testified that the tenant has not paid anything towards the tenant's April 2013 rent that became due on April 2, 2013. The landlord decreased the amount of the landlords' requested monetary award from \$1,185.00 to \$720.00, the amount now owing.

Issues(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? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that she allowed the tenant to return to this rental building on April 1, 2012, when the tenant entered into an agreement to rent this one bedroom unit. Monthly rent is set at \$720.00, payable in advance on the first of each month. The landlords continue to hold the tenant's \$360.00 security deposit paid on or about April 1, 2012.

The landlord's original application for a monetary award of \$1,185.00 included a request for unpaid rent of \$360.00 owing for February 2013 and \$720.00 for March 2013. The landlords also included a request for the reimbursement of an estimated \$85.00 for the replacement of the lock on the tenant's door. The landlord testified that the tenant had removed and replaced the landlord's lock with the tenant's own lock. The landlord has no key to enable her to access the rental unit.

Analysis

Although the landlord accepted a payment towards this tenancy on March 25, 2013, she did so for use and occupancy only and did not reinstate this tenancy by accepting this payment. There is undisputed evidence that the tenant failed to pay all of the rent identified as owing in the 10 Day Notice within five days of receiving that Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by March 22, 2013. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of

Possession which must be served on 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.

There is undisputed evidence that there is currently \$720.00 owing in unpaid rent for this tenancy. I allow the landlords a monetary award in the amount of \$720.00 for unpaid rent presently owing.

Although the landlords' application did not clearly identify that they were seeking a monetary award for damage, I accept that the landlords clearly indicated in the Details of the Dispute section of their application their intention to seek a monetary award of \$85.00 to remove and replace the lock that the tenant placed on the door to this rental unit. For that reason and as I find the landlord's \$85.00 estimate a reasonable one, I allow the landlords a monetary award in the amount of \$85.00 to remove and replace this lock.

I allow the landlords to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award requested in this application. No interest is payable over this period. I also allow the landlords to recover their filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant(s). Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlords' application for an Order of Possession for cause is withdrawn.

I issue a monetary Order in the landlords' favour under the following terms, which allow the landlords to recover unpaid rent, damage to the lock and the landlords' filing fee and to retain the tenant's security deposit:

Item	Amount
Unpaid April 2013 Rent	\$720.00
Removal of Tenant's Lock and Replacement with a New Lock	85.00
Less Security Deposit	-360.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$495.00

The landlords are provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 18, 2013

Residential Tenancy Branch