



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Heather Park Properties Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNR, OPR, MND, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on April 9, 2013 for:

1. An Order cancelling a Notice to End Tenancy – Section 46.

The Landlord applied on April 18, 2013 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for damage – Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on March 1, 2013. Rent of \$825.00 is payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$412.50 as a security deposit and \$100.00 as a pet deposit. The Landlord served the Tenant with a notice to end tenancy for cause following which the Tenant failed to pay rent April 2013 rent. On April 4, 2013 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice") by posting the Notice on the door. The Tenant states that rent was not paid because he did not want to and because he was waiting for this hearing. Rent for May 2012 has also not been paid.

The Landlord states that during the tenancy the Tenant smashed the 3rd floor fire door and that this was witnessed by another tenant. The Tenant states that he did not damage this door. The Landlord states that the tenant who witnessed the incident is afraid of the tenant and as a result does not wish to be identified.

It is noted that the Tenant was agitated and swore repeatedly to interrupt the proceedings despite warnings. Near the end of the hearing the Tenant became more volatile and disconnected from the conference call.

Analysis

Section 46 of the Act requires that upon receipt of a notice to end tenancy for unpaid rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. Based on undisputed evidence that the rent was not paid, I find that the Notice is valid. I dismiss the Tenant's application. As the Notice is valid, I find that the Landlord has substantiated an entitlement to an Order of possession. I also find that the Landlord is entitled to unpaid rent for April and May 2013 in the amount of **\$1,650.00**.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. I prefer the Landlord's evidence that the Tenant damaged the door as it holds a ring of truth. I therefore find that the Landlord has substantiated that the Tenant caused the damage to the fire door. Given the invoice for costs, I find that the Landlord is entitled to **\$110.00** for the costs to repair the door.

As the Landlord's application has been successful I find that the Landlord is entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$1,810.00**. Setting the security and pet deposit of **\$512.50** plus zero interest off the entitlement leaves **\$1,297.50** owed by the Tenant to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order that the Landlord retain the **deposit** and interest of \$512.50 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$1,297.50**. If necessary, this order may be filed in the Small Claims 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: May 06, 2013

Residential Tenancy Branch