



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prudential Kelowna Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The landlord applied for a monetary order for unpaid rent or utilities, for authority to keep all or part of the tenant's security deposit, and to recover the filing fee.

An agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide oral testimony and speak to the landlord's evidence. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice") was considered. The agent testified that the Notice was served on the tenant by registered mail on April 19, 2013 to the tenant's forwarding address provided by the tenant in an e-mail dated March 25, 2013, which was submitted in evidence. The agent testified that the registered mail package was received by the tenant on April 23, 2013. I find the tenant was sufficiently served in accordance with the *Act*.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

A month to month tenancy agreement began on November 1, 2012. Monthly rent in the amount of \$875.00 was due on the first day of each month. The tenant paid a security

deposit of \$437.50 at the start of the tenancy which the landlord continues to hold. The tenant vacated the rental unit on March 30, 2013, however, according to the agent, failed to return the keys to the rental unit to the landlord.

The landlord has submitted a monetary claim for \$1,603.00 comprised of the following:

Loss of April 2013 rent	\$875.00
Plumber costs	\$728.00
TOTAL	\$1,603.00

The agent testified that local city officials ordered that all tenancies must end by June 30, 2013 due to the rental unit being a four unit rental building on orchard land. The agent confirmed that they regularly communicated with the tenant by e-mail and by phone during the tenancy.

The agent stated that on March 25, 2013, an e-mail was received by the tenant giving notice that he would be vacating the rental unit on April 1, 2013. The agent stated that they could not re-rent the rental unit due to local city officials having ordered all tenancies to end effective June 30, 2013. The landlord is seeking loss of April 2013 rent in the amount of \$875.00 due to the tenant failing to provide proper one month notice under the *Act*.

The agent testified that on February 6, 2013, the agent received a call from the tenant between 10:00 p.m. and 10:30 p.m. complaining that his toilet was “flooding” the rental unit and requested a plumber. The agent stated that she contacted their regular maintenance company, 3SMK, who dispatched a plumber from the company, RR, to address the flooding toilet. The agent stated that the plumber from RR advised her and took photos of chunks of potatoes found in the toilet which had caused the toilet to overflow. The agent submitted five colour photos in evidence and an invoice from 3SMK in the amount of \$728.00 for an “after hours” callout related to dispatching the plumber from RR. The colour photos show a toilet and chunks of potatoes in a garbage container.

The tenant vacated the rental unit on March 30, 2013. According to the agent, the tenant failed to return the rental unit keys to the landlord.

Analysis

Based on the agent's undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

Claim for loss of April 2013 rent – The agent confirmed that local city officials ordered that all tenancies must end by June 30, 2013 due to the rental unit being a four unit rental building on orchard land. The agent is seeking unpaid rent of \$875.00 due to the tenant providing late notice under the *Act*. The agent confirmed that the rental unit has not been advertised since the tenant vacated the rental unit due to the order from the local city officials.

While I find the tenant violated section 45 of the *Act* by providing insufficient notice as required under section 45 of the *Act*, **I find** the landlord is not entitled to compensation for unpaid rent for April 2013 as the rental unit was ordered closed by local city officials. Therefore, **I dismiss** this portion of the landlord's claim without leave to reapply.

Claim for plumber costs – The agent testified that on February 6, 2013, the agent received a call from the tenant between 10:00 p.m. and 10:30 p.m. complaining that his toilet was “flooding” the rental unit and requested a plumber. The agent stated that she contacted their regular maintenance company, 3SMK, who dispatched a plumber from the company, RR, to address the flooding toilet.

Photo evidence was submitted by the landlord which support that potatoes were found by the plumber and the invoice submitted is for \$728.00 for an “after hours” callout to address the flooding toilet. I find that flushing potatoes down the toilet is negligent and is not a reasonable use of a toilet. Section 32 of the *Act* states:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

[emphasis added]

Therefore, **I find** the landlord has met the burden of proof that the tenant violated section 32(3) of the *Act*. **I grant** the landlord \$728.00 as compensation for the plumbing costs related to the tenant's actions of flushing potatoes down the toilet in the rental unit.

As the landlord's application had merit, **I grant** the landlord the recovery of the filing fee in the amount of **\$50.00**.

The landlord continues to hold the tenant's security deposit of \$437.50, which has accrued no interest since the start of the tenancy.

I find that the landlord has established a total monetary claim of **\$778.00** comprised of \$728.00 in plumber costs plus the \$50.00 filing fee. **I authorize** the landlord to retain the tenant's full security deposit of \$437.50 in partial satisfaction of the claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing in the amount of **\$340.50**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the landlord has established a total monetary claim of \$778.00 comprised of \$728.00 in plumber costs plus the \$50.00 filing fee. I authorize the landlord to retain the tenant's full security deposit of \$437.50 in partial satisfaction of the claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing in the amount of \$340.50. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 19, 2013

Residential Tenancy Branch

