



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 23, 2013, by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord testified that she personally served the Tenant with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on July 23, 2013, at 7:50 p.m. at the rental unit. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding and I proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Has the Landlord regained possession of the rental unit?
2. Has the Landlord met the burden of proof to be awarded a Monetary Order?

Background and Evidence

The Landlord initially testified that she personally served the Tenant with only the hearing documents on July 23, 2013. I explained to the Landlord that no evidence had been placed on the *Residential Tenancy Branch* filed and questioned if evidence documents were served to the Tenant. The Landlord responded by stating "no additional evidence was served to the Tenant, what evidence would there be". Upon further clarification the Landlord argued that a total of twenty one (21) documents were served to the Tenant as evidence which would have included the tenant ledger, tenancy agreement and 10 Day Notice.

The Landlord stated that she could not provide testimony relating to if or how their evidence was submitted to the *Residential Tenancy Branch* as that would have been handled by her head office.

The Landlord stated the Tenant entered into a fixed term tenancy agreement that began on September 1, 2012 and was set to end on August 31, 2013. Rent was payable on

the first of each month in the amount of \$885.00 and on August 22, 2012, the Tenant paid \$442.50 as the security deposit.

When the Tenant failed to pay the July 2013 rent the Landlord issued a 10 Day Notice to end tenancy and posted it to the Tenant's door on July 2, 2013.

The Landlord advised that the Tenant told her that he could not afford to pay the rent so he would be vacating the rental unit by August 1, 2013; however, she did not know what date that conversation took place. The Landlord did not check on the unit until August 7, 2013, at which time she found the unit empty and the keys were left inside. They are withdrawing their request for an Order of Possession and are seeking a monetary order for July and August unpaid rent plus a late payment fee of \$25.00 for each month.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenants are deemed to have received the 10 Day Notice on July 5, 2013, three days after it was posted to the door, and the effective date of the Notice is July 15, 2013. The Tenant did not pay the rent and informed the Landlord he would be moving out. Therefore, this tenancy ended on the effective date of the Notice, **July 15, 2013**, pursuant to section 44(1) of the *Act*.

The Landlord claimed unpaid rent for July 2013 of \$885.00, in accordance with section 26 of the *Act* which stipulates a tenant must pay rent in accordance with the tenancy agreement. Based on the aforementioned, I award the Landlord July 1, 2013 rent in the amount of **\$885.00**.

Section 7(1)(d) of the Regulations stipulates that a landlord may charge a non-refundable fee of not more than \$25 for late payment of rent if the tenancy agreement provides for that fee.

The tenancy agreement is not in evidence before me; therefore, I find there is insufficient evidence to prove the tenancy agreement provides for late payment charges. Accordingly, I dismiss the Landlord's request to recover late payment fees from the Tenant.

The Landlord has sought payment for August 2013 rent. The evidence supports the Tenant informed the Landlord he could not pay the rent owed so he would be vacating the unit by August 1, 2013. Therefore, I find the Landlord had the obligation to attempt to re-rent this unit as soon as possible in order to mitigate their loss of revenue for August. The Landlord made no effort to check the unit until August 7, 2013, which is when they found the unit empty and the keys left inside.

Based on the above and in the absence of proof when they began advertising the unit for rent, I find the Landlord provided insufficient evidence to prove the test for damage or loss as listed above. I make this finding in part because there is no evidence before me to prove the Landlord attempted to re-rent this unit for August 2013. Accordingly, I dismiss the Landlord's claim for August 2013, rent, without leave to reapply.

The Landlord has been partially successful with their application; therefore I award partial recovery of the filing fee in the amount of **\$25.00**.

Conclusion

The Landlord has been awarded a Monetary Order for **\$910.00** (\$885.00 + \$25.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The Landlord withdrew their request for an Order of Possession.

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: August 29, 2013

Residential Tenancy Branch

