



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, MNDC, FF, CNR, ERP, RPP, LRE, LAT, RR

Introduction

Pursuant to the *Residential Tenancy Act*, R.S.B.C. (the *Act*) and amendments thereto, I was designated to hear this matter under section 58. This hearing dealt with applications from both the landlord and the tenants under the *Act*. The landlord applied for:

- an Order of Possession for unpaid rent and for cause pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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 her filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs and emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65; and

- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

While the landlord attended the hearing by way of conference call, the tenant did not, although I waited until 1:45 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the dispute resolution proceeding The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the tenant's participation in this hearing, I order his application dismissed without liberty to reapply.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. The landlord testified that she handed the tenant a 10 Day Notice for unpaid rent owing for November 2013 on November 1, 2013, and posted a second 10 Day Notice on the tenant's door at 6:00 p.m. on December 3, 2013. She also testified that she posted a 1 Month Notice on the tenant's door on October 30, 2013. I find that the landlord served the above documents to the tenant in accordance with sections 88 and 90 of the *Act*.

The landlord testified that she posted a copy of her dispute resolution hearing package on the tenant's door on November 7, 2013. She also testified that she handed another copy of her dispute resolution hearing package to the tenant on November 27, 2013. Although an application for a monetary award cannot be served by posting on a tenant's door, I am satisfied on the basis of the landlords' sworn testimony that the landlord served the tenant with her hearing package in accordance with section 89(1) of the *Act*, by handing it to him on November 27, 2013.

At the commencement of the hearing, the landlord testified that the tenant vacated the rental unit on December 8, 2013, the day before this hearing, without leaving her his forwarding address. As the landlord now has the tenant's keys to the rental unit and has obtained possession of the rental premises, she withdrew her application for an Order of Possession. The landlord's application for an Order of Possession is withdrawn.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy for a basement rental unit in the landlord's home began on the basis of an oral agreement on August 28, 2013. Monthly rent was set at \$500.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$250.00 security deposit paid on or about August 28, 2013.

The parties submitted written evidence that their oral agreement initially included the tenant's use of a television formerly owned by the landlord's mother, who previously resided in this rental unit. Over time, and as the tenant requested the removal of other furnishings left in this rental unit by the landlord, the landlord requested the return of this television set. The parties apparently discussed the amount of rent reduction that would result from the return of the landlord's television set. The parties provided different evidence with respect to whether any agreement was reached between them regarding the monthly reduction that was to result from the removal of this item from their agreement. At one point, during the landlord's entry to the rental unit to undertake an unrelated emergency repair, she seized the television in question. While she offered another television to the tenant, no replacement television was provided to the tenant.

The tenant sought a \$50.00 reduction in his monthly rent and deducted it from the \$500.00 that would otherwise have been owing for November 2013. When the tenant did not pay all of the \$500.00 that she considered owing for November 2013, the landlord issued a 10 Day Notice seeking the missing \$50.00 in rent owing for that month. The landlord issued a second 10 Day Notice when the tenant did not pay his December 2013 rent. The landlord testified that the tenant has not paid any of the \$550.00 she identified as owing in the two 10 Day Notices.

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. There is undisputed evidence that the tenant did not pay all of his monthly rent for November 2013, and did not pay his rent for December 2013, the last month of his tenancy. As such, the landlord is entitled to compensation for losses she incurred as a result of the tenants' failure to comply with the terms of their oral tenancy agreement and the *Act*.

On the basis of the evidence before me, I find that there was a slight decrease in the value of this tenancy agreement when the landlord seized the television set from the tenant. In accordance with the powers delegated to me under section 65(1)(f) of the *Act*, I find that the parties have submitted sufficient evidence to demonstrate that there has been a retroactive reduction in the value of this tenancy agreement by \$25.00 for each of November and December 2013. As such, I find that the landlord is entitled to a monetary award of \$25.00 owing from November 2013 and \$475.00 (\$500.00 - \$25.00 = \$475.00) owing for December 2013.

As the landlord has been successful in her application, I find that she is entitled to recover her \$50.00 filing fee from the tenant. I also allow the landlord to retain the tenant's security deposit plus applicable interest. No interest is payable.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and her filing fee, and to retain the security deposit:

Item	Amount
Amount Owing from November 2013 Rent	\$25.00
Amount Owing from December 2013 Rent	475.00
Less Security Deposit	-250.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$300.00

The landlord is 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.

The tenant's application is withdrawn without leave to reapply. The landlord's application for an Order of Possession is also withdrawn without leave to reapply.

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: December 09, 2013

Residential Tenancy Branch

