



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord noted in the Details of Dispute on their Application for Dispute Resolution that they were seeking unpaid rent for November 2013, December 2013 and January 2014 *"plus February 2014 @ \$455.00 and March 2014 @ \$455.00"*.

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to recover the payment for February and March which fall after the effective date of the 10 Day Notice. Therefore, I amend their application, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 21, 2014, by the Landlord to obtain an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; to keep the security deposit; 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 parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed in accordance with the Rules of Procedure.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The undisputed evidence was that the Tenant entered into a month to month tenancy that began on May 1, 2012. Rent is subsidized and as of October 1, 2013, rent of \$435.00 plus \$20.00 parking is due on or before the first of each month.

The Landlord testified that as of February 21, 2014, the Tenant owes \$1,790.00 which is comprised of \$1,710.00 rent and \$80.00 for parking. The Tenant has been given numerous chances to make payments and several 10 Day Notices have been issued, as provided in their evidence. The most recent Notice was served on January 08, 2014.

The Tenant stated that she was not disputing the Landlord's claim. She confirmed that she owes \$1,790.00 consisting of rent and parking fees and asked if she could pay \$1,000.00 by Monday and enter into a payment plan for the rest.

The Landlord argued that the Tenant has failed to uphold several payment plans that they had agreed to in the past; therefore, they wished to proceed with their application for the Order of Possession and Monetary Order as filed.

Analysis

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 Tenant is deemed to have received the 10 Day Notice on January 11, 2014, three days after it was posted to the door, and the effective date of the Notice is **January 21, 2014**.

The Tenant neither paid the rent in full nor disputed the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **January 21, 2014**, and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed accumulated unpaid rent of \$1,275.00 that was due January 1, 2014, 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 unpaid rent up to January 31, 2014, in the amount of **\$1,275.00**.

As noted above this tenancy ended **January 21, 2014**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for the month of February 2014.

The Landlord will not regain possession of the unit until after service of the Order of Possession and will have to find a new tenant; therefore, I award the Landlord use and occupancy and any loss of rent for the entire month of February 2014, in the amount of **\$435.00**.

The Landlord argued that the Tenant entered into a separate parking agreement at \$20.00 per month and she now owes \$80.00 for unpaid parking fees (4 x \$20.00 per month); an amount included in the Landlord's claim.

The *Residential Tenancy Act* does not govern civil parking contracts. Accordingly, I dismiss the Landlord's claim for parking fees, for want of jurisdiction.

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid Rent	\$1,275.00
Use & Occupancy and loss of Rent to Feb. 28	435.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,760.00
LESS: Security Deposit \$462.50 + Interest 0.00	<u>-462.50</u>
Offset amount due to the Landlord	<u>\$1,297.50</u>

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days after service upon the Tenant**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order for **\$1,297.50**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does 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.

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: February 21, 2014

Residential Tenancy Branch

