



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

Preliminary Issues

At the outset of this proceeding the Landlord stated that the Tenant vacated the property on February 27, 2014, and they regained possession at that time. Accordingly, I dismiss the request for an Order of Possession, as possession has been obtained by the Landlord.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 21, 2014, by the Landlord, seeking a Monetary Order for unpaid rent, 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.

The Landlord appeared at the start of the teleconference hearing at 1:00 p.m. while the Tenant signed into the hearing at 1:06 p.m. I informed the Tenant of the testimony I had heard prior to him signing into this proceeding. The Tenant acknowledged receipt of the Application for Dispute Resolution, Notice of hearing document, and the Landlord's evidence on approximately January 22, 2014. Both parties gave affirmed testimony.

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

Has the Landlord proven entitlement to a monetary order, pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed evidence was that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on May 15, 2011 and switched to a month to month tenancy after May 31, 2012. Rent began at \$1,025.00 per month and was

subsequently increased to \$1,050.00 effective September 1, 2012. On May 9, 2011 the Tenant paid \$512.50 as the security deposit.

The Landlord testified that when the Tenant failed to pay the January 2014 rent a 10 Day Notice was posted to his door on January 2, 2014, in the presence of a witness. The Landlord stated the Tenant made two payments towards the January rent in the amounts of \$850.00 and \$120.00 leaving a balance owing of \$100.00 for January 2014.

The Landlord argued that the Tenant vacated the unit on February 27, 2014, without providing written notice and without paying the past due rent or late fees. The rental unit has not been re-rented so the Landlord seeks to recover rent and late fees for February and March 2014 plus the \$100.00 outstanding from January 2014.

The Tenant testified that he is not disputing the amounts claimed for January or February 2014. He confirmed that he remained in the unit until February 27, 2014.

The Tenant stated that he is disputing the claim for rent and late fees for March 2014 because he informed the Landlord in early February that he would be vacating the unit by the end of February 2014. The Tenant later stated that he told the Landlord that he would be vacating shortly after receiving the hearing package on January 22, 2014 so the Landlord had ample notice that he would be vacating the unit.

The Tenant then argued that this Landlord has a history of renovating the units and re-renting them for a higher price so he "assumes" that his unit is not being re-rented because they are conducting renovations on his unit.

In closing, the Landlord stated that they are not renovating the Tenant's unit and they are not renovating any other units in this building. She was not aware of the exact date that the Tenant said he would be vacating the unit and pointed out that regardless of when he told someone his notice was required to be given in writing.

At the completion of this hearing the Landlord requested that the Tenant provide them with a forwarding address and also requested that their application be dismissed with leave to reapply so they could apply for damages caused to the unit.

The Tenant provided a service address as listed on the front page of this decision.

Analysis

The *Residential Tenancy Branch Rules of Procedure* provides how a dispute resolution hearing is to be conducted and when a party can request an adjournment or withdraw an application.

A party may, at the outset of a proceeding request to withdraw their application or request an adjournment, at which time the Arbitrator will determine if the criteria set out in Rule # 6.4 has been met to allow an adjournment.

In this case the Landlord waited until all the evidence had been submitted before making a request to have their application dismissed with leave to reapply.

Upon consideration of the Landlord's requested I declined to dismiss this application with leave to reapply. I did so as I had already heard the merits and evidence pertaining to the claim for unpaid rent and loss of rent. Furthermore, at the time this application was filed the Tenant was still in possession of the rental unit and any damage claims would have been premature or unknown at that time. Matters relating to damages to the unit were not before me and are not substantially linked to the claim for unpaid rent or loss of rent. Therefore, the Landlord has leave to file a future claim for any loss suffered from damage to the unit.

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.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

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 5, 2014, three days after it was posted to the door, and the effective date of the Notice is January 15, 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 15, 2014.**

The Tenant continued to occupy the unit until February 27, 2014 making partial payments towards of \$850.00 and \$120.00 the outstanding January rent.

The Landlord claimed unpaid rent of \$100.00 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 find the Landlord has met the burden of proof and I award them unpaid rent for January 2014 in the amount of **\$100.00.**

As noted above this tenancy ended **January 15, 2014**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for loss of rent and use and occupancy of the unit and not rent for February and March 2014.

The Tenants remained in possession of the rental unit until February 3, 2014, and the Landlords have not been able to re-rent the unit as of today's date of March 12, 2014. The Landlords suffered a loss of rent the entire month of February and still have no prospective tenant for the remainder of March 2014.

Notwithstanding the Tenant's submission that he "assumes" the Landlord is renovating his unit, which is the cause of the delay in re-renting it, I find there to be insufficient evidence to support that the loss suffered by the Landlord relates in any way to renovations. Rather, the evidence supports that the loss is in direct relation to the Tenant's breach of section 26 of the Act and his overholding of the unit. Accordingly, I find the Landlord is entitled to use and occupancy and loss of rent for the entire months of February and March 2014 in the amount of **\$2,100.00** (2 x \$1,050.00).

The tenancy agreement provides for \$20.00 late payment fees in accordance with # 7 of the *Residential Tenancy Regulation*. The evidence supports the January 1, 2014 rent was late and the Landlord applied the Tenant's partial payments to the late fee, leaving a balance owing of \$100.00 for rent, as listed above.

This tenancy ended **January 15, 2014**, in accordance with the 10 Day Notice. Provisions such as late payment fees provided in the tenancy agreement are no longer in affect once a tenancy has ended. Therefore, I find the Landlord is not entitled to claim late payment fees for February or March 2014, and the claim is dismissed, without leave to reapply.

The Landlord has primarily been successful 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 for January 2014	\$ 100.00
Use & Occupancy & Loss of Rent Feb. March 2014	2,100.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,250.00
LESS: Security Deposit \$512.50 + Interest 0.00	<u>-512.50</u>
Offset amount due to the Landlord	<u>\$1,737.50</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$1,737.50**. 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: March 14, 2014

Residential Tenancy Branch

