



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 she was withdrawing their request for an Order of Possession because the Tenants vacated the property on February 3, 2014, and they regained possession at that time.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 21, 2014 and amended January 27, 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 submitted documentary evidence which indicates each Tenant was served with copies of the Landlord's application for dispute resolution and Notice of dispute resolution hearing, on January 23, 2014, by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find each Tenant is deemed served notice of this proceeding on January 28, 2014, five days after it was mailed, in accordance with section 90 of the Act and I proceeded in the Tenants' absence.

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 Landlord submitted evidence that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on June 1, 2013 and switched to a month to month tenancy after November 30, 2013. The Tenants were required to pay rent of \$710.00 on the first of each month and on May 28, 2013 the Tenants paid \$355.00 as the security deposit and they paid \$200.00 as the pet deposit.

The Landlord testified that when the Tenants failed to pay their January rent a 10 Day

Notice was posted to their door on January 2, 2014, in the presence of a witness. The Tenants vacated the unit on February 3, 2014, without paying the past due rent or late fees.

The Landlord has since re-rented the unit, effective March 1, 2014, and is seeking \$710.00 for January 2014 rent, \$710.00 for February 2014 rent, plus late payment fees of \$20.00 for each month. Late payment fees are provided in #3(a) of the tenancy agreement.

In support of their application the Landlord submitted documentary evidence which included, among other things, a copy of the 10 Day Notice; the tenancy agreement signed by M.B.; a Tenancy Amendment Agreement signed by both M.B. and D.H. adding D.H. as a Tenant; and a tenant payment ledger.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenants 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 and corroborated by their evidence.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant.

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 January 5, 2014, three days after it was posted to the door, and the effective date of the Notice is January 15, 2014. The Tenants neither paid the rent nor disputed the Notice; therefore, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **January 15, 2014**, and were required to vacate the rental unit to which the notice relates, pursuant to section 46(5) of the *Act*. The Tenants over held the unit and vacated on February 3, 2014.

The Landlord claimed unpaid rent of \$710.00 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 **\$710.00**.

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 2014.

The Tenants remained in possession of the rental unit until February 3, 2014, and the Landlords were not able to re-rent the unit until March 3, 2014. The Landlords suffered a loss of the entire amount of rent for February due to the Tenants' breach. Accordingly, I find the Landlord is entitled to use and occupancy and loss of rent for the entire month of February 2014 in the amount of **\$710.00**.

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, as it was not paid. Therefore I find the Landlord has proven the test for loss and I approve their claim for January 2014 late fees in the amount of **\$20.00**.

As noted 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 after a tenancy has ended. Therefore, I find the Landlord is not entitled to claim late payment fees for February 2014, and the claim is dismissed, without leave to reapply.

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

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$1,490.00** (\$710.00 + \$710.00 + \$20.00 + \$50.00). This Order is legally binding and must be served upon the Tenants. 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.

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

