



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MND MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 22, 2014, by the Landlord to obtain an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; damage to the unit site or property, money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord provided affirmed testimony that the Tenant was personally served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on January 22, 2014, in the presence of a witness. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding, in accordance with section 89 of the Act, and I proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Has the Landlord regained possession of the rental unit?
2. Is the Landlord entitled to a Monetary Order, pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a verbal month to month tenancy that began at the beginning of October 2013. Rent of \$700.00 was due on or before the first of each month and the Tenant paid \$350.00 as the security deposit.

The Landlord testified that the Tenant stopped paying her rent so on January 12, 2014 the Landlord personally served the Tenant with a 10 Day Notice, as per the copy provided in his evidence.

The Landlord submitted that the Tenant remained in the unit until February 28, 2014; after which the Landlord regained possession of the unit. Therefore, the Landlord no longer required an Order of Possession. He stated that the Tenant's Social Worker paid him directly for the Tenant's February rent but the January rent of \$700.00 remains outstanding.

The Landlord confirmed that at the time he filed his application he had estimated that there would be costs incurred for damage to the unit, given the Tenant's behaviour up to that point. Once the Tenant vacated the unit he submitted additional evidence which included four black and white photos which are not legible due to the manner in which they were printed. He argued that he did the repair work himself and that since regaining possession he realized there was more work and cleaning to be done.

In closing, the Landlord stated that he wished to recover the unpaid rent and have an opportunity to recover his costs for cleaning and damages.

Analysis

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

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 received the 10 Day Notice on January 12, 2014, and the effective date of the Notice was January 22, 2014.

The Tenant neither paid the rent nor disputed the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, pursuant to section 46(5) of the *Act*. The Tenant vacated the unit and returned possession to the Landlord on February 28, 2014. Accordingly, the Landlord no longer requires an Order of Possession, and that request is now moot.

The Landlord claimed unpaid rent of \$700.00 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. The Tenant remained in the unit until February 28, 2014 and the Ministry of Social Development paid February's rent. Based on the aforementioned, I award the Landlord January 2014 unpaid rent in the amount of **\$700.00**.

Section 59(2) of the *Act* stipulates that an application for dispute resolution must be in the applicable form and must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

The *Residential Tenancy Branch* provides information and fact sheets detailing how a claim and evidence must be compiled and served upon each party. A Monetary Order worksheet and instructions on how to serve electronic evidence are amongst those publications.

Section 59 (5)(c) of the *Act* states that the director may refuse to accept an application for dispute resolution if the application does not comply with subsection (2).

In this case the Landlord filed a monetary claim based on an assumption that damages would be caused to the rental unit. There was no detailed explanation of the damages and no itemized list of costs incurred provided at the time the application was filed. Therefore, I find this application does not meet the requirements set out in section 59(2)(b) of the *Act*, as it was filed prematurely. Accordingly, the application for damages is dismissed, with leave to reapply.

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:

January 2014 Rent	\$700.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$ 750.00
LESS: Security Deposit \$350.00 + Interest 0.00	<u>- 350.00</u>
Offset amount due to the Landlord	<u>\$400.00</u>

Conclusion

The request for an Order of Possession is dismissed, as the Landlord has already regained possession.

The Landlord has been awarded a Monetary Order for **\$400.00**. 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.

The Landlord's claim for damages is HEREBY DISMISSED, with 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: March 14, 2014

Residential Tenancy Branch

