



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 618204 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee.

An agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide her evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") and Application for Dispute Resolution (the "Application") were considered. The agent testified that the Notice of Hearing, Application and evidence were served on the tenant by registered mail on March 21, 2014, and a registered mail tracking number was submitted in evidence. The agent stated that the registered mail package was addressed to the tenant at the rental unit address and that the tenant did not vacate the rental unit until March 31, 2014. The agent testified that according to the Canada Post registered mail tracking website, the package was successfully delivered to the tenant on April 1, 2014, when the tenant signed for the registered mail package. Based on the above, I find the tenant was served in accordance with the *Act* on April 1, 2014.

Preliminary and Procedural Matter

At the outset of the hearing, the agent testified that the tenant vacated the rental unit on March 31, 2014, and as a result, requested to withdraw the landlord's claim for an order of possession as the landlord has already received possession of the rental unit back from the tenant. I find that the landlord's withdrawal of their request for an order of

possession does not prejudice the tenant in any way, and as a result, I have not considered the landlord's request for an order of possession.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. A month to month tenancy agreement began on August 15, 2011. Monthly rent in the amount \$900.00 was due on the first day of each month. The tenant paid a security deposit of \$450.00 at the start of the tenancy which the landlord continues to hold.

The landlord's monetary claim is for \$1,900.00, comprised of the following:

Item 1. Unpaid February 2014 rent	\$900.00
Item 2. February 2014 late fee	\$25.00
Item 3. Unpaid March 2014 rent	\$900.00
Item 4. March 2014 late fee	\$25.00
Item 5. Recovery of filing fee	\$50.00
TOTAL	\$1,900.00

The landlord submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated March 4, 2014 indicating \$1,800.00 owing due March 1, 2014, and with an effective vacancy date of March 14, 2014. The agent stated the tenant did not dispute the 10 Day Notice or pay the \$1,800.00 owing. The agent stated that the tenant vacated the rental unit on March 31, 2014 and has not provided his forwarding address in writing to the landlord.

The agent referred to section 8 of the tenancy agreement submitted in evidence, which indicates that a late fee of \$5.00 per day will be charged for all late rent payments. The agent stated that the maximum late fee is \$25.00 as the maximum total for one late fee. The agent stated that the tenant owes a late fee for both February 2014 and March 2014, as the tenant failed to pay rent for both of those months.

Analysis

Based on documentary evidence, the undisputed testimony of the agent, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Monetary claim of landlord – The agent testified that the tenant failed to pay \$900.00 for February 2014 rent, and \$900.00 for March 2014 rent, for a total of \$1,800.00 in unpaid rent. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Therefore, I find the tenant breached section 26 of the *Act* by failing to pay rent for the months of February 2014 and March 2014.

I find that the tenancy agreement also supports that a late fee of \$5.00 per day will be charged to the tenant for all late rent payments. Section 7 of the Regulation limits late fees to \$25.00 per late fee. I find that the landlord is entitled to a late fee for February 2014 and March 2014 as rent was not paid for either of those months by the tenant.

Based on the above, I find the landlord has met the burden of proof and is owed \$1,850.00 by the tenant, comprised of \$1,800.00 for unpaid rent for the months of February and March of 2014, plus two late fees of \$25.00 for a total of \$50.00 for two late fees.

As the landlord's application had merit, I grant the landlord the recovery of the \$50.00 filing fee.

Monetary Order – I find that the landlord has established a total monetary claim of **\$1,900.00** comprised of \$1,800.00 in unpaid rent, \$50.00 for late fees, plus recovery of

the \$50.00 filing fee. I find that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit which the landlord continues to hold in the amount of \$450.00 which has accrued \$0.00 in interest to date. **I ORDER** the landlord to retain the tenant's full security deposit of \$450.00 in partial satisfaction of the landlord's monetary claim, and I grant the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of **\$1,450.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The landlord has established a total monetary claim of \$1,900.00 comprised of \$1,800.00 in unpaid rent, \$50.00 for two late fees of \$25.00 per late fee, plus recovery of the \$50.00 filing fee.

The landlord has been ordered to retain the tenant's full security deposit of \$450.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of \$1,450.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: April 28, 2014

Residential Tenancy Branch

