



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRYSTAL RIVER COURT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, and for a monetary order for unpaid rent.

The landlord's agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on March 22, 2014, a Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

Preliminary Matters

At the outset of the hearing the landlord's agent stated that the tenant vacated the rental unit on or about April 7, 2014 and an order of possession is no longer required.

At the outset of the hearing the landlord's agent indicated that they sent evidence by fax to the Residential Tenancy Branch on April 29, 2014. However, that evidence is not in the file for my consideration.

It is important to note that the landlords provided a fax transmittal on April 25, 2014, and on the cover sheet they indicated that they were seeking to amend their monetary claim to included damages to the rental unit and unpaid utilities. The landlord did not amend their Application in accordance with the provisions of Rule 2.5. Therefore, in this decision I have considered the landlord's monetary claim as it was filed in their Application of March 17, 2014. However, I have allowed the landlord to included an

additional month of unpaid rent as the tenant was aware that rent was payable under the terms of the tenancy agreement.

Issue to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on April 2013. Rent in the amount of \$925.00 was payable on the first of each month. A security deposit of \$450.00 and a pet damage deposit of \$100.00 were paid by the tenant. The tenancy ended on or about April 7, 2014.

The landlord's agent testified the tenant failed to pay rent for March 2014, and was served with a 10 Day Notice to End Tenancy. The landlord's agent stated the tenant did not pay rent and did not dispute the notice within the required timelines under the Act. The landlord seeks to recover unpaid rent for March 2014, in the amount of **\$925.00**.

The landlord's agent testified the tenant was still residing in the rental unit on April 1, 2014, and failed to pay rent under the terms of the tenancy agreement. The landlord stated they believe the tenant vacated on or about April 7, 2014. The landlord seeks to recover unpaid rent for April 2014, in the amount of **\$925.00**.

The landlord's agent testified that clause 19 of the tenancy agreement allows them to collect \$25.00 for each month the tenant is late paying rent. The landlord seeks to recover late fees in the amount of \$50.00.

The landlord's agent stated they seek to offset the unpaid rent with the security and pet damage deposits.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;

- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 26 of the Residential Tenancy Act states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The evidence of the landlord's agent was the tenant did not pay rent owed for March and April 2014, and vacated the unit on or about April 7, 2014. I find the tenant has breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$1,850.00**.

The undisputed testimony of the landlord was that clause 19 of the tenancy agreement allows the landlord to charge \$25.00 for late payment of rent. As I have found the tenant has not paid rent for March and April 2014, the landlord is entitled to recover the late payment fee. Therefore, I find the landlord is entitled to recover late fees in the amount of **\$50.00**.

I find that the landlord has established a total monetary claim of **\$1,950.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

As the landlord has requested to offset the unpaid rent with the security deposit and the pet damage deposit, I order that the landlord retain the security deposit of \$450.00 and the pet damage deposit of \$100.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,400.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary and may keep the security deposit and pet damage deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: May 07, 2014

Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order* (**Please Note: Legislated deadlines apply**)

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca