



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR MNR FF
For the tenant: CNR

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied 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.

The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and to recover the filing fee.

The landlord attended the hearing. The tenant did not attend the hearing. The tenant was provided the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”) document dated March 17, 2014 after filing his application. After a ten minute waiting period, the tenant’s application was dismissed in full, without leave to reapply, as the tenant failed to attend the hearing to present the merits of his application.

The landlord stated that he served the tenant with the Notice of Hearing and Application for Dispute Resolution Hearing (the “Application”) on March 21, 2014 at the rental unit in person and that the tenant accepted service at approximately 4:00 p.m. I accept the undisputed testimony of the landlord that the tenant was sufficient served under the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The landlord requested to reduce his monetary claim from \$3,840.00 to \$3,465.00 as the landlord received a partial payment of April 2014 rent in the amount of \$375.00. I find that a reduction in the landlord's monetary claim does not prejudice the tenant, and as a result, I have permitted the landlord to reduce their monetary claim to \$3,465.00, plus the cost of the filing fee.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

The landlord stated that a written fixed term tenancy agreement began on July 1, 2012 and reverted to a periodic, month to month tenancy agreement after July 1, 2013. Monthly rent in the amount of \$1,570.00 is due on the first day of each month. The tenant paid a security deposit of \$785.00 and a pet damage deposit of \$785.00 at the start of the tenancy, which the landlord continues to hold. The landlord stated that the tenant continues to occupy the rental unit, and as a result, is seeking an order of possession.

The landlord testified that the tenant still owes \$700.00 for March 2014 rent, \$1,195.00 for April 2014 rent, and \$1,570.00 for May 2014 rent, for a total of \$3,465.00 in unpaid rent.

The landlord stated that he served the tenant on March 14, 2014 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated March 14, 2014. The tenant disputed the 10 Day Notice on March 17, 2014, however, failed to attend the hearing this date, May 2, 2014, to present the merits of his application. The 10 Day Notice states that \$700.00 in unpaid rent was due on March 1, 2014 and had an effective vacancy date of March 24, 2014.

Analysis

Based on the documentary evidence and the landlord's undisputed testimony provided during the hearing, 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.

10 Day Notice – The landlord issued a 10 Day Notice dated March 14, 2014, on March 14, 2014 for \$700.00 due March 1, 2014. Although the tenant disputed the notice on March 17, 2014, the tenant failed to attend the hearing this date, resulting in the tenant's application being dismissed in full, without leave to reapply. Section 55 of the *Act* states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director **must grant** an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) **the landlord makes an oral request for an order of possession**, and

(b) **the director dismisses the tenant's application** or upholds the landlord's notice.

[my emphasis added]

The tenant continues to reside in the rental unit, according to the landlord. Based on the above, and taking into account the landlord's verbal request for an order of possession and the landlord's application requesting an order of possession, I must grant the landlord an order of possession. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenant, as the effective vacancy date of the 10 Day Notice, March 24, 2014, has passed.

Landlord's claim for unpaid rent – The landlord testified that the tenant has failed to pay \$3,465.00 in rent, comprised of \$700.00 owing for March 2014, \$1,195.00 owing for April 2014, and \$1,570.00 owing for May 2014. Section 26 of the *Act* requires that a tenant pay rent on the day that it is due in accordance with the tenancy agreement. I find that the tenant breached section 26 of the *Act* by failing to pay the full amount of rent on the day that it is due as claimed by the landlord. Therefore, I find the landlord has met the burden of proof and is entitled to monetary compensation of **\$3,465.00** in unpaid rent as claimed.

As the landlord's claim had merit, **I grant** the landlord the recovery of their filing fee in the amount of **\$50.00**.

As the tenant's claim was dismissed, **I do not** grant the tenant the recovery of the tenant's filing fee.

I find that the landlord has established a total monetary claim of **\$3,515.00** comprised of \$3,465.00 in unpaid rent, plus 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 of \$785.00 and pet damage deposit of \$785.00, which the landlord continues to hold in the total amount of \$1,570.00 which has accrued \$0.00 in interest to date.

I ORDER the landlord to retain the tenant's full security deposit of \$785.00 and full pet damage deposit of \$785.00, 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 to the landlord by the tenant in the amount of **\$1,945.00**. 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 tenant's application has been dismissed in full, without leave to reapply.

The landlord has proven their claim and is, therefore, entitled to an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$3,515.00. The landlord has been ordered to retain the tenant's full security deposit of \$785.00 and full pet damage deposit of \$785.00, 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 to the landlord by the tenant in the amount of \$1,945.00. 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: May 2, 2014

Residential Tenancy Branch

