



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Columbia Property Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

Introduction:

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for:

- an Order of Possession for Unpaid Rent
- a monetary Order for unpaid rent
- a monetary Order for money owed or compensation for damage or loss
- to retain all or part of the security deposit
- to recover the fee for filing an Application for Dispute Resolution.

At the outset of the hearing the Agent for the Landlord withdrew the application for an Order of Possession, as the Landlord has possession of the rental unit.

The Agent for the Landlord stated that on March 26, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant at the rental unit, via registered mail. The Landlord submitted a Canada Post receipt that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

The Agent for the Landlord stated that the Tenant passed away on April 05, 2014 and she has not been provided with a mailing address for anyone who is representing the estate of the Tenant. I find it appropriate to proceed with the hearing today, as the Tenant was properly served with notice of the hearing. In the event that Tenant's estate wishes to present evidence that is relevant to this claim, the estate retains the right to file an Application for Review Consideration, pursuant to section 79(2)(a) of the *Act*.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were not served to the Tenant. As the evidence was not served to the Tenant it was not accepted as evidence for these proceedings.

Issue(s) to be Decided:

Is the Landlord entitled to a monetary Order for unpaid rent/lost revenue, to a monetary Order for late fees, to a monetary Order for damage to the rental unit, and to keep all or part of the security deposit?

Background and Evidence:

The Agent for the Landlord stated that this tenancy began on March 01, 2013; that the Tenant agreed to pay monthly rent of \$750.00 by the first day of each month; and that the Tenant paid a security deposit of \$375.00.

The Agent for the Landlord stated that the Tenant did not pay any rent for March or April of 2014.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of March 15, 2014, was posted on the Tenant's door on March 05, 2014.

The Agent for the Landlord stated that the Tenant passed away on April 05, 2014 and that family members removed some of his personal possessions after his death. She stated that on April 10, 2014 she received written authorization from a family member to dispose of any property left in the rental unit.

The Agent for the Landlord stated that rental units in this residential complex have been advertised in March and April, and that the rental unit was not rented for April of 2014.

The Agent for the Landlord stated that there is a term in the tenancy agreement that requires the Tenant to pay a fee of \$25.00 whenever rent is not paid on time. The Landlord is seeking compensation for "late payment fees" for August of 2013, December of 2013, January of 2014, February of 2014, March of 2014, and April of 2014.

The Landlord is seeking \$77.70 for repairing a modification the Tenant made to the electrical panel. The Agent for the Landlord stated that the Tenant told her he made the modification in an attempt to repair the air conditioner. The Agent for the Landlord stated that the Landlord subsequently hired an electrician to repair the air conditioner and the electrician informed the Landlord that he believed the modification to the electrical panel cause the air conditioner to fail.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$750.00 by the first day of each month and that the Tenant did not pay the rent that was due for

March of 2014. As he is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$750.00 in outstanding rent for March of 2014.

A landlord has the right to end a tenancy if rent is not paid when it is due, pursuant to section 46 of the *Act*. On the basis of the undisputed evidence, I find that a Notice to End Tenancy that directed the Tenant to vacate the rental unit by March 15, 2014, served pursuant to section 46 of the *Act*, was posted on the Tenant's door on March 05, 2014.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on March 08, 2014.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on March 08, 2014, I find that the earliest effective date of the Notice is March 18, 2014.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was March 18, 2014.

Section 46 of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy ended on the effective date of the Notice.

As the Tenant did not vacate the rental unit on March 18, 2014, I find that he is obligated to pay rent, on a per diem basis, for the days he remained in possession of the rental unit. As he has already been ordered to pay rent for the period between March 19, 2014 and March 31, 2014, I find that the Landlord has been fully compensated for that period. I also find that the Tenant must compensate the Landlord for the 10 days in April that he, or his estate, had legal possession of the rental unit, at a daily rate of \$25.00, which equates to \$250.00.

I find that the Tenant fundamentally breached the tenancy agreement when he did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when he did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that his continued occupancy of the rental unit made it difficult, if not impossible for the Landlord to find new tenants for April 01, 2014 as the Tenant had not vacated the rental unit by that time. I therefore find that the Tenant

must compensate the Landlord for the loss of revenue the Landlord experienced for the remainder of April of 2014, in the amount of \$500.00.

The legislation authorizes a landlord to collect a fee when rent is not paid when it is due; providing the tenancy agreement stipulates that this fee will be charged. I find that the Landlord submitted insufficient evidence to establish that there is a term in the tenancy agreement that authorizes the Landlord to collect this fee. Although the Agent for the Landlord stated that this term is in the tenancy agreement, a copy of that tenancy agreement is not before me for consideration. In circumstances where the legislation specifies that a particular term must be specified in a tenancy agreement, I find that the party relying on that term has an obligation to submit the written document unless it is impossible or impractical to do so. As the tenancy agreement has not been accepted as evidence, I decline to enforce the term of that agreement that requires the Tenant to pay a fee whenever rent is not paid on time.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

In the absence of evidence to the contrary, I find that the Tenant damaged the electrical panel when he attempted to repair the air conditioner. In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord failed to establish the true cost of repairing the electrical panel. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Agent for the Landlord's testimony that the Landlord paid \$77.70 for this repair. I therefore dismiss the Landlord's claim for compensation for repairing the electrical panel.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,550.00, which is comprised of \$1,500.00 in unpaid rent/lost revenue and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$375.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,175.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant's estate, 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: May 12, 2014

Residential Tenancy Branch

