



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNSD, FF, O

Introduction

This hearing was convened by way of conference call in response to the landlords' application for an Order of Possession for unpaid rent; an Order of Possession for cause; for an Order permitting the landlord to keep all or part of the tenant's security and pet deposit; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on June 24, 2014. Canada Post tracking numbers were provided by the landlords in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The female landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Preliminary Issues

The landlords had applied for a Direct Request Proceeding for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent for July, 2014 of \$900.00. This proceeding took place on July 30, 2014 and the landlords were successful with their application. The landlords sought a writ of Possession and the bailiffs removed the tenant from the unit on August 08, 2014. The landlord served the tenant with the Monetary Order for unpaid rent for July, 2014. The landlords seek to amend this application to withdraw their applications for an Order of Possession and to seek to apply the security and pet deposit to unpaid rent for August, 2014 and receive a Monetary Order for the balance due in rent for August.

Issue(s) to be Decided

- Are the landlords entitled to recover unpaid rent for August?
- Are the landlords permitted to keep all or part of the security deposit?

Background and Evidence

The landlord testified that this tenancy started on September 01, 2013 for a month to month tenancy. Rent for this unit was \$900.00 per month due on the first day of each month. The tenant paid a security deposit of \$450.00 and a pet deposit of \$50.00 on August 01, 2013.

The landlord testified that after the tenant had been removed by the bailiffs on August 08, 2014 the landlords found the tenant had not cleaned the unit or made repairs to damage caused in the unit. This prevented the landlords from advertising the unit in order to re-rent the unit during the month of August. The landlord testified that the repairs and cleaning have nearly been completed and they hope to get the unit re-rented as soon as possible.

The landlords seek therefore to recover unpaid rent for August of \$900.00 and request an Order to allow the landlords to keep the security and pet deposit of \$500.00 to offset against the rent for August. The landlords request a Monetary Order for the balance of August rent plus the \$50.00 filing fee from the tenant.

Analysis

The tenant did not appear at the hearing to dispute the landlords' claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords' documentary evidence and sworn testimony before me. I refer the parties to the Residential Tenancy Policy Guidelines # 3 which state, in part, that, a tenant is not liable to pay rent after a tenancy agreement has ended pursuant to these provision; however, if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises.

Consequently, as the tenant did not vacate the unit until August 08, 2014 the landlords would be entitled to recover rent on a *per diem* basis from August 01 to August 08, 2014. Furthermore this Policy Guideline also states that in certain circumstances, a tenant may be liable to compensate a landlord for loss of rent even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

I am satisfied that the tenant overheld at the unit after being issued with an Order of Possession which was effective two days after service on the tenant. The landlords sought enforcement through the Supreme Court of British Columbia and were able to evict the tenant on August 08, 2014. Furthermore, I am satisfied from the undisputed testimony before me that the landlords have been unable to re-rent the unit for the remainder of August due to the amount of cleaning and repairs required to the unit. It is

reasonable to assume that after the tenant was evicted from the unit by the bailiffs that the tenant did not return to clean the unit or repair any damage caused.

I therefore find the landlords are entitled to amend their application to recover unpaid rent for August, 2014 of \$900.00 and I Order the landlords to keep the security deposit of \$450.00 and the pet deposit of \$50.00 pursuant to s. 38(4)(b) of the *Act*. The amount of \$500.00 has been offset against the unpaid rent for August.

I find the landlords are also entitled to recover the \$50.00 filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlords as follows:

Loss of rent for August	\$900.00
Filing fee	\$50.00
Less security and pet deposits	(-\$500.00)
Total amount due to the landlords	\$450.00

Conclusion

I HEREBY FIND in favor of the landlords' amended monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$450.00**. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial Court 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: August 26, 2014

Residential Tenancy Branch

