



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAYWEST MANAGEMENT CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent, to keep the Tenant's security and pet damage deposits, for money owed or compensation for loss or damage under the *Residential Tenancy Act* (the "Act"), and to recover the filing fee for the cost of making the Application.

An agent for the Landlord appeared for the hearing and provided affirmed testimony as well as written evidence prior to the hearing. The Landlord's agent testified that she served the Tenant with a copy of the Application and the Notice of Hearing documents on July 18, 2014 by registered mail.

The Landlord's agent provided the Canada Post tracking number in written evidence to support this method of service. Section 90(c) of the Act states that a document sent by registered mail is deemed to have been received five days after it is mailed. Based on the evidence of the Landlord, and in the absence of any evidence from the Tenant to dispute this, I find that the Landlord served the Tenant with the required documents for this hearing in accordance with Section 89(1) (c) of the Act.

There was no appearance by the Tenant during the 15 minute duration of the hearing and there was no submission of written evidence by the Tenant prior to this hearing, despite being served notice of this hearing in accordance with the Act.

As a result, I have carefully considered the undisputed affirmed testimony of the Landlord's agent and the written evidence of the Landlord in this Decision as follows.

The Landlord's agent testified that since the time of making this Application the Tenant has also failed to pay for August and September, 2014 rent. In addition, the Landlord wants to claim for late rent fees for the three months that the rent was not

paid. As a result, I amended the Landlord's Application, pursuant to Section 64(3) (c) of the Act, allowing her to claim these additional amounts of unpaid rent and the late rent fees.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent and late fees?
- Is the Landlord entitled to keep all of the Tenant's deposits in partial satisfaction of the Landlord's monetary claim?

Background and Evidence

The Landlord's agent testified that this fixed term tenancy started on September 1, 2013 for a period of one year after it is intended for it to continue on a month to month basis. The Tenant's rent under the signed written tenancy agreement was established in the amount of \$660.00 which is payable on the first day of each month.

The Landlord's agent testified that the Tenant paid a \$330.00 security deposit on August 29, 2013 and was required to pay a pet damage deposit for the same amount; however the Landlord agreed that the Tenant could pay the pet damage deposit in small installments but the Landlord's agent testified that to date, the Tenant has only paid \$295.00 as a pet damage deposit. The Landlord's agent confirmed that she retains a total of \$625.00 in the Tenant's deposits.

The Landlord's agent testified that the Tenant failed to pay rent on July 1, 2014. As a result the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") by posting it on the Tenant's door on July 4, 2014. A copy of the Notice provided in written evidence, shows an expected date of vacancy of July 14, 2014 due to \$695.00 in unpaid rent and a \$25.00 late fee due on July 1, 2014.

The Landlord's agent testified that the amount on the Notice included the final \$35.00 installment of the pet damage deposit which had not been paid by the Tenant. I informed the Landlord that this amount did not relate to unpaid rent.

The Landlord's agent testified that since the time of making the Application the Tenant also failed to pay rent for August and September, 2014. However, the Landlord's agent testified that the Tenant had paid some rent, namely \$230.00 on July 23, 2014, \$230.00

on August 1, 2014 and \$140.00 on August 13, 2014. As a result, the total outstanding rent arrears being claimed by the Landlord is \$1,380.00.

The Landlord also claims \$25.00 each in late fees for the three months that the rent was not paid and only partial payments towards the outstanding amount have been paid.

The Landlord's agent noted that the addendum to the tenancy agreement signed by the Tenant sets out in point (4) that the Tenant will be charged a \$25.00 Late Payment Fee for rent paid after the 1st of the month, the day that rent is due under the signed agreement.

Therefore, the total monetary claim amended on the Landlord's Application is \$1,455.00.

Analysis

Sections 46(4) and (5) of the Act states that within five days of a Tenant receiving the Notice, a Tenant must pay the overdue rent or make an Application to dispute the Notice; if the Tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

Having examined the Notice, I find that the contents on the approved form complied with the requirements of the Act. The Tenant was served by the Landlord with the Notice on July 4, 2014 by attaching it to the Tenant's door. Section 90(c) of the Act explains that documents served by attaching them to the Tenant's door are deemed to have been received three days after. Therefore, I find that the Tenant was deemed to be served with the Notice on July 7, 2014, and had until July 12, 2014 to pay the overdue rent or dispute the Notice, neither of which the Tenant did.

As the Notice was not deemed to have been received by the Tenant until July 7, 2014, the effective vacancy date on the Notice is corrected to July 17, 2014 pursuant to Section 53 of the Act.

As a result, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the corrected vacancy date of the Notice and therefore, the Landlord is entitled to an Order of Possession effective two days after service on the Tenant as the effective date of vacancy on the Notice has now passed.

Based on the written and verbal evidence of the Landlord above and in the absence of any evidence from the Tenant to dispute this, I find that the Landlord is awarded the rental arrears in the amount of **\$1,380.00** claimed.

Section 7(d) of the *Residential Tenancy Regulation* allows a Landlord to charge a fee of no more than \$25.00 for late payment of rent which is documented in a tenancy agreement. The tenancy agreement provided by the Landlord in written evidence, indicates that the Tenant will be charged \$25.00 for late payment of rent. Therefore, I find that the landlord is entitled to the late rent fees for a total amount of **\$75.00**.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$50.00** filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$1,505.00.

As the Landlord already holds the Tenant's \$625.00 in deposits, and no interest is payable on this amount, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded \$880.00.

Conclusion

For the reasons set out above, I grant the Landlord an Order of Possession effective **two days after service on the Tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court.

I also grant the Landlord a Monetary Order pursuant to Section 67 of the Residential Tenancy Act in the amount of **\$880.00**. This order must be served on the Tenants and may then be enforced in the Provincial Court (Small Claims) 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: September 18, 2014

Residential Tenancy Branch

