



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, and compensation for loss of rent revenue, to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on September 27, 2014 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant via registered mail at the address noted on the application. A Canada Post tracking number and receipt was provided as evidence of service to each tenant.

These documents are deemed to have been served in accordance with section 89 and 90 of the Act; however neither tenant appeared the hearing.

Preliminary Matters

The tenants have vacated the rental unit; the landlord did not require an order of possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent, fees, parking and loss of rent revenue?

Background and Evidence

The tenancy commenced on May 1, 2010; rent is currently \$1015.00 per month, due on the 1st day of each month. A copy of the signed tenancy agreement and parking agreement was supplied as evidence. The tenants were required to pay \$10.00 per month parking. Clause 3 of the tenancy agreement required payment of a \$20.00 late rent fee.

The landlord stated that on September 2, 2014 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of September 15, 2014, was served by posting to the tenant's door. The tenants did not dispute the Notice and paid no rent after receiving the Notice.

The tenant's vacated the unit on October 31, 2014.

The landlord has claimed compensation as follows:

September rent	\$1015.00
Parking	10.00
Late fee	20.00
October rent	1015.00
Parking	10.00
Late fee	20.00
Loss of November rent revenue	507.50
TOTAL	\$2597.50

The claim made was originally in the sum of \$2,620.00; but that sum has been reduced as the landlord was able to rent the unit effective November 15, 2014.

The tenants left the unit in a state that required repair and painting. They had painted walls yellow and orange and caused damage to the carpet; to the point it had to be replaced. Furniture was left in the unit and had to be removed. Four parties looked at the unit before October 31, but the landlord was not able to rent it out until they completed the repairs. The landlord has claimed compensation for the loss of ½ November 2014 rent as they were able to locate new occupants' mid-month.

Analysis

From the evidence before me I find that the tenants were served with a 10 day Notice ending tenancy that required them to vacate the rental unit effective September 15, 2014.

I find, pursuant to section 44(f) of the Act that the tenancy ended effective September 15, 2014; the effective date of the Notice.

From the evidence before me I find that the landlord is entitled to compensation for unpaid rent in the sum of \$507.50 to September 15, 2014.

Residential Tenancy Branch policy suggests a tenant is not liable to pay rent after a tenancy agreement has ended pursuant to section 44 of the Act. However if a tenant remains in possession of the premises (over-holds), the tenant will be liable to pay

occupation rent on a *per diem* basis until the landlord recovers possession of the premises.

I find that the tenant's over-held from September 16, 2014 to October 31, 2014, the date they vacated.

As the tenants vacated the rental unit on October 31, 2014, I find that the tenants are obligated to pay rent, on a per diem basis, for the days the tenants remained in possession of the rental unit between September 15 and October 31, 2014. Therefore, pursuant to section 65 of the Act, I find that the tenants must compensate the landlord, in the sum of \$1,522.50 for the days they remained in the he unit after the tenancy ended.

As the tenancy ended effective September 15, 2014 I find that the landlord is not entitled to late rent fees beyond September 1, 2014; as the tenancy had ended.

In relation to the claim for loss of November 2014 rent; in the absence of the tenant's, who were served with Notice of this hearing, I find, on the balance of probabilities, that the landlord did have to remove furniture, replace the carpets and repaint the unit. This caused the landlord a delay in being able to re-rent the unit effective October 31, 2014. As a result of the state of the unit the landlord was only able to attract a new occupant effective November 15, 2014. Therefore, I find that the landlord is entitled to compensation in the sum of \$507.50 for the loss of November 2014 rent revenue.

I find that the landlord is entitled to parking fees for September and October, as the tenants used parking during that time and signed a separate parking agreement.

Therefore, I find the landlord is entitled to the following:

	Claimed	Accepted Rent + fees	Accepted revenue
September rent	\$1015.00	507.50	507.50
Parking	10.00	10.00	-
Late fee	20.00	20.00	-
October rent	1015.00		1015.00
Parking	10.00	10.00	-
Late fee	20.00	0	-
Loss of November rent revenue	507.50		507.50
TOTAL	\$2597.50	547.50	2,030.50

The landlord said they would like to retain the security deposit paid in the sum of \$497.50, on April 9, 2010. Section 72(2) of the Act provides an arbitrator with the ability to deduct any money owed by a tenant to a landlord, from the deposit due to the tenant.

Therefore, I find that the landlord may retain the tenant's security deposit, in partial satisfaction of the monetary claim.

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order for the balance of \$2,130.50. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The balance of the claim is dismissed.

Conclusion

The landlord is entitled to a monetary Order for unpaid rent, loss of rent revenue, and fees.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

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: November 13, 2014

Residential Tenancy Branch

