



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC QUORUM PROPERTIES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing although the hearing lasted approximately 31 minutes. The landlord's agent, JE ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord's agent confirmed that he was the on-site manager for the rental building property, and had authority to represent the landlord as an agent at this hearing.

The landlord testified that he served the tenant with a 10 Day Notice by posting it to the door of his rental unit on October 22, 2014. The landlord testified that the tenant advised him that she received the 10 Day Notice. In accordance with sections 88 and 90 of the Act, I find that the tenant was deemed served with the 10 Day Notice on October 25, 2014, the third day after its posting.

The landlord testified that he served the tenant with his application for dispute resolution hearing package ("Application") on November 10, 2014, by way of registered mail. He provided a Canada Post receipt and tracking number, as proof of service, with his Application. The landlord testified that the tenant advised him that she received the Application. In accordance with section 89 and 90 of the Act, I find that the tenant was deemed served with the landlord's Application on November 15, 2014, the fifth day after its registered mailing.

During the hearing, the landlord withdrew his application for an order of possession for unpaid rent, as the tenant had already vacated the rental unit. Accordingly, this portion of his application is withdrawn.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that this periodic tenancy began on August 1, 2013. Monthly rent in the amount of \$730.00 was payable on the first day of each month. A security deposit of \$365.00 was paid by the tenant and the landlord still retains this deposit. A written tenancy agreement was provided with the landlord's Application. The landlord testified that the tenant vacated the rental unit on December 2, 2014 and did not provide a forwarding address to the landlord. The landlord completed a move-out inspection with the tenant on December 2, 2014, changed the locks and took back possession of the rental unit.

The landlord is seeking \$3,760.25 in unpaid rent and NSF fees, which he said that the tenant has not paid. The landlord confirmed that no payments have been made by the tenant since the 10 Day Notice was served upon the tenant.

The landlord provided a rent ledger with his Application. The ledger shows unpaid rent in the amount of \$730.00 for each of May, July, September, October and November 2014, totaling \$3,650.00. It also shows unpaid NSF fees in the amount of \$36.75 for each of May, July and September 2014, totaling \$110.25. Rent payments of \$730.00 were made by the tenant on June 6, 2014 and August 25, 2014.

The landlord issued a 10 day Notice, dated October 22, 2014, for unpaid rent in the amount of \$730.00 due on October 1, 2014. The landlord testified that the unpaid rent and NSF fees at the time of the 10 Day Notice were \$3,030.25, as confirmed by the ledger. He advised the tenant that she owed this amount when he spoke with her on October 10, 2014. He stated that he only put the amount of \$730.00 on the 10 day Notice, because that indicated the amount for unpaid October 2014 rent, not including all of the previous outstanding rent and fees owing.

The landlord testified that, as per the rent ledger, the tenant paid for \$35.00 in NSF fees on December 6, 2013 and February 19, 2014. He indicated that the NSF fees were raised to \$36.75 by the landlord's bank.

The landlord testified that he spoke with the tenant again after he served the Application on the tenant, and she indicated that she still planned to vacate the rental unit at the end of November 2014 and that she would pay the landlord when she had the money to pay him. The landlord

did not communicate the new outstanding balance of \$3,760.25 to the tenant. The landlord testified that he had tried to attempt a settlement and payment plans with the tenant previously, but that nothing had worked out because the tenant was waiting for a large cheque to come in for a settlement. The landlord stated that he had approximately 6 conversations with the tenant, regarding her outstanding rent owed for this tenancy. The landlord testified that he was not aware of the tenant's bounced cheques and NSF fees between May and September 2014, until October 10, 2014, when all of the information came in at once, and he informed the tenant of her outstanding balance due on that day.

The landlord testified that he incurred some cleaning charges in the approximate amount of \$285.00 after the tenant vacated the rental unit. The landlord stated that he would likely not be seeking this amount from the tenant, as he did not apply for it in this Application and was hoping just to recover a monetary amount for unpaid rent and NSF fees.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not appear. The tenant failed to pay the full rent due on October 1, 2014, within five days of being deemed to have received the 10 Day Notice. No partial payments have been made by the tenant. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on November 5, 2014, the corrected effective date on the 10 Day Notice. The tenant did not vacate the rental unit on that date and stayed until December 2, 2014. The tenant has owed an outstanding balance to the landlord since May 2014.

Although the 10 Day Notice did not state the full prior outstanding balance due for this tenancy, I am satisfied that it stated the rent due for October 2014 in the amount of \$730.00. The tenant had notice of the outstanding balance of \$3,030.25 which was due on October 1, 2014, when the landlord advised her of it on October 10, 2014. The tenant had notice of the full outstanding balance of \$3,760.25 owed to the landlord when she received notice of this application while she was still residing at the rental unit.

I find that the tenant was aware that the landlord was charging her NSF fees for her bounced rent cheques. She paid separately for the \$35.00 NSF fees in December 2013 and February 2014, as per the landlord's ledger. The tenant had notice of her bounced cheques and the increased \$36.75 NSF fees, as it was indicated on the rent ledger in the landlord's Application.

Accordingly, I find that the landlord is entitled to \$3,760.25 in rental arrears and NSF fees, from the tenant. This includes unpaid rent in the amount of \$3,650.00 for May, July, September, October and November 2014. It also includes unpaid NSF fees in the amount of \$110.25 for May, July and September 2014.

The landlord testified that he continues to hold the tenant's security deposit of \$365.00. He has applied to retain this security deposit in partial satisfaction of the monetary award. In accordance with the offsetting provisions under section 72 of the Act, I find that the landlord is entitled to retain this security deposit in partial satisfaction of the monetary award.

As the landlord was successful in his Application, he is entitled to recover the \$50.00 the filing fee from the tenant.

Conclusion

The landlord is provided with a monetary order in the amount of \$3,445.25 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application for an order of possession for unpaid rent, is withdrawn.

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: January 2, 2015

Residential Tenancy Branch

