



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 00997336 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNR, FF

Introduction

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

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1347 in order to enable the tenant to connect with this teleconference hearing scheduled for 1330. The landlord's agents attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord's agents are employees of the landlord. All testimony for the landlord was provided by the agent KO (the agent).

The agent testified that he served the tenant with the dispute resolution package (including all evidence before me) on 14 January 2015 by registered mail. The landlord provided me with a Canada Post tracking number that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Preliminary Issues - Amendments to Landlord's Application

The agent asked me to exercise my discretion to amend the landlord's application pursuant to paragraph 64(3)(c) of the Act.

At the hearing the agent informed me that the tenant vacated the rental unit at 2000 on 1 February 2015. As the tenant had vacated the rental unit, the agent asked to

withdraw the landlord's request for an order of possession as it was no longer required. I allowed this amendment as there is no prejudice to the tenant in doing so.

At the hearing, the agent also asked to amend this application to include February's use and occupancy of the rental unit. As the tenant did not vacate the rental unit until late on the evening of 1 February 2015, the tenant reasonably ought to have known that this amount was owed; I have allowed the amendment as there is no undue prejudice to the tenant.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 September 2014. Monthly rent of \$850.00 was due on the first. The landlord collected a security deposit of \$825.00 on 1 September 2014, which the landlord continues to hold.

On 30 November 2014, the landlord issued a 1 Month Notice to the tenant.

The agent testified that the tenant failed to pay rent for November, December, January and February.

The agent testified that the tenant's cheques for November's and December's rents were returned as the tenant had insufficient funds. The agent testified that the tenant told the agent that the tenant would deal with the unpaid rent, but that she did not.

After the 1 Month Notice was issued, the tenant gave no indication that she was going to leave. When the agent noted that the tenant was still occupying the rental unit beyond 31 December 2014, the landlord filed this application.

On 14 January 2015, the agent provided notice to the tenant that the landlord would be conducting an inspection of the rental unit to determine if the unit had been abandoned. The agent testified that he attempted to inspect the rental unit on 17 January 2015. The

agent testified that at this time he was threatened by the tenant's boyfriend and was refused entry to the rental unit.

On 17 January 2015, the agent provided a letter to the tenant that reiterated the landlord's demand that the tenant vacate the rental unit. This letter also set out that the tenant had \$2,550.00 in arrears. The letter also warned the tenant that if she continued to block the landlord's attempts to re-rent the suite, the tenant would be responsible for a rental loss for February. The letter also offered 21 January 2015 as an offer date for the move-out condition inspection.

On 21 January 2015, the agent attended at the rental unit and was refused entry. No inspection occurred.

The agent testified that he had advertised the rental unit on the internet. The agent testified that throughout late December and all of January, the tenant refused to allow the landlord to show the rental unit. The agent testified that he had a second unit in the residential building that he had advertised around the same time. The agent testified that the second unit was nicer. The agent testified that he was able to rent that unit within one week. The agent testified that because of the uncertainty around the rental unit he was unable to start showing the rental unit until 1 February 2015 when the tenant left the rental unit.

Analysis

The agent has provided sworn and uncontested testimony that the tenant failed to pay rent or amounts for use and occupancy for November, December, and January. The agent's contemporaneous letters document the same arrears. I find that the tenant did not vacate the rental unit until 1 February 2015 and that the tenant owed \$850.00 for the use and occupancy of the rental unit in February. The agent has proven, on a balance of probabilities, that the landlord is entitled to \$3,400.00 in arrears pursuant to sections 26 and 57 of the Act.

The agent testified that the landlord continued to hold the tenant's \$425.00 security deposit, plus interest, paid on 1 September 2014. Over that period, no interest is payable. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$3,025.00 under the following terms:

Item	Amount
Unpaid November Rent	\$850.00
Unpaid December Rent	850.00
Unpaid January Use and Occupancy	850.00
Unpaid February Use and Occupancy	850.00
Offset Security Deposit Amount	-425.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$3,025.00

The landlord is provided with these orders in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: February 02, 2015

Residential Tenancy Branch

