



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, 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 unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; 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 I waited until 9:50 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord's representatives ("Landlord SK" and "Landlord YL") attended the hearing and were given a full opportunity to be heard, to present sworn testimony, and to make submissions.

Landlord SK testified that the tenant has vacated the rental unit and withdrew the landlord's application for an Order of Possession. The landlord's application for an Order of Possession is withdrawn.

The landlord also made application request at the hearing to amend his application to retain the tenant's security deposit and recover losses from cleaning of the rental unit after the tenant vacated.

Landlord YL testified that he personally served the tenant with the 10 Day Notice to End Tenancy ("10 Day Notice") on January 2, 2015 at her rental unit. Landlord YL testified that the tenant was served with the Application for dispute resolution package with notice of this hearing on January 13, 2015 by registered mail. Based on the undisputed sworn testimony of the landlord's representative and pursuant to section 88, 89 and 90 of the *Act*, I accept the tenant was duly served with the 10 Day Notice and that the tenant was deemed served with the landlord's dispute resolution package on January 18, 5 days after its mailing.

Issues 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

This one year fixed term tenancy began in April 2013 to continue as a month to month tenancy after the one year term. The rental amount is \$1065.00 payable on the first day of each month. Landlord SK testified that the landlord continues to hold a security deposit in the amount of \$525.00 paid by the tenant on April 5, 2013. Both landlord representatives testified that the tenant has vacated the rental unit.

The landlord had originally applied for an Order of Possession for unpaid rent for the month of January and the preceding months. Landlord SK testified that the tenant did not pay rent of \$1065.00 due on January 1, 2015. Landlord YL testified that, after incomplete payment of rent in June, August, and November 2014, he spoke to the tenant about her rent arrears. Landlord SK testified, and provided documentary evidence, that the tenant signed a debt repayment plan indicating a balance owing of \$1065.00 to be paid over the course of November and December 2014, with a final payment on December 29, 2014. Landlord SK testified that the payment arrangement was not honoured by the tenant. Landlord SK stated that the tenant made three payments; \$200.00 on November 24, 2014; \$400.00 on December 1, 2014; and \$200.00 on December 8, 2014.

Landlord SK testified that the tenant did not pay the outstanding rent in full, including \$1065.00 for January 2015 rent, after receiving the 10 Day Notice on January 2, 2015. After the expiration of the 10 Day period, the landlord applied for an Order of Possession. Landlord SK testified that, after the landlord's application was filed and served, the tenant entered into a second debt repayment plan to pay a total outstanding balance of \$1995.00 to be paid in full, with regular payments by May 20, 2015. The landlord provided documentary evidence that the tenant agreed to payments scheduled for; February 20; March 20; April 20; and May 20 to repay all outstanding rental arrears.

The landlord provided further documentary evidence. That evidence included two hand-written notes from the tenant addressed to the landlord. One noted, dated January 12, 2015 addressed to Landlord YL was a notice that the tenant was vacating the rental unit, stating, "I will continue to pay off my debt to the Pinnacle until the balance is zero."

Also included in the landlord's package was a formal accounting of rent payments and non-payments that illustrate a series of returned cheques from June, August, November and December 2014, as well as January 2015.

The landlord applied for a monetary award of \$1995.00 for outstanding rent from incomplete rental payments in 2014 and rent for January 2015, and the recovery of the \$50.00 filing fee for this application for a total of \$2045.00. This figure included the following items:

Item	Amount
Unpaid Rent – 2014 arrears	\$930.00
Unpaid Rent – January 2015	1065.00

Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$2045.00

The tenant's January 29, 2015 debt repayment agreement outlined the tenant's commitment to pay \$1995.00 to the landlord as follows;

- \$500.00 on February 20, 2015;
- \$500.00 on March 20, 2015;
- \$500.00 on April 20, 2015; and
- \$495.00 on May 20, 2015.

Analysis

The landlord has provided sufficient evidence, in both testimony and documentary form, to show that the tenant failed to pay rent in full from June 2014 to January 2015. The documentary evidence included a formal accounting and acknowledgement by the tenant. Based on the evidence of the landlord's representatives, I find that the landlord is entitled to receive an order for unpaid rent of \$1995.00. However, the landlord has entered into a debt repayment agreement with the tenant, allowing her until May 20, 2015 to pay her rental arrears and outstanding fees to the landlord.

Given that the landlord and tenant entered into this agreement after the notice to end tenancy was served and the application for dispute resolution had been filed and served, the landlord should provide an opportunity for the tenant to meet the terms of this repayment agreement.

The landlord also testified that he continues to hold a security deposit of \$525.00 from April 5, 2013. There is no interest payable for the period of time that the security deposit has been in the landlord's possession to the date of this decision for this tenancy. The landlord sought to amend his application to retain the security deposit. A landlord is required to apply to retain a security deposit and, since the tenant was not in attendance at this hearing, an amendment at the hearing would prejudice the tenant and her right to know the case against her.

Section 72 of the *Act* states,

72 (1) The director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

In all of the circumstances and using the offsetting provisions of section 72(2)(b) of the Act, I will allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

The landlord also sought to amend his application for a monetary award to include recovery of losses for cleaning and repairing the rental unit. Residential Tenancy Branch Rules of Procedure state that the applicant may amend an application before the dispute resolution hearing. The Rules of Procedure also state that no additional evidence is to be submitted at the hearing. These rules ensure that a respondent is aware of the scope of the hearing and are prepared to respond, if they chose to do so. While the respondent has chosen not to attend this hearing, the respondent was not made aware that the landlord would be seeking a further amount beyond the outstanding rent. Given the importance, as a matter of natural justice and fairness, that the respondent must know the case against them, I do not allow this amendment. The landlord remains at liberty to make a formal application for a monetary award for damage or losses arising out of this tenancy.

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

I issue a monetary award for unpaid rent in the amount of \$1520.00 to the landlord. This amount reflects a reduction for allowing the retention of the tenant's security deposit. I issue this monetary order on the understanding that the landlord will act in accordance with the payment agreement reached between the parties. With the reduced amount outstanding to the landlord, the tenant may meet her rent debt repayment obligations, including compensation for the landlord's filing fee in this matter, as follows;

- \$500.00 on February 20, 2015;
- \$500.00 on March 20, 2015;
- \$470.00 on April 20, 2015; and
- \$ 50.00 on May 20, 2015.

Conclusion

The landlord withdrew the application for an Order of Possession. Therefore, it is withdrawn.

The landlord is entitled to a monetary order as follows;

Item	Amount
Unpaid Rent – 2014 arrears	\$930.00
Unpaid Rent – January 2015	1065.00
Less Security Deposit	-525.00
Recovery of Filing Fee for this Application	50.00

Total Monetary Order	\$1520.00
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The landlord is provided with formal Orders in the above terms. This monetary Order is to be used **only** in the event that the tenant does not fulfill the commitment to pay the landlord a total of \$1,520.00 by May 20, 2015, as outlined in her written agreement of January 29, 2015, and as amended by my order that the landlord be allowed to retain her security deposit. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

As no formal application for a monetary award for damage or losses arising out of this tenancy was before me, I have not considered the landlord's oral request to issue a monetary award for cleaning and repairs. The landlord remains at liberty to submit a separate application for these items.

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: February 16, 2015

Residential Tenancy Branch