



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD
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;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- authorization to retain all or a portion of the respondents' 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 respondents, pursuant to section 72.

The two respondents, "tenant SL" and "respondent PL," did not attend this hearing although it lasted approximately 26 minutes. The landlord's agent, LV ("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 testified that she is the assistant property manager of the landlord company named in the application. The landlord testified that she had authority to speak as agent on behalf of the landlord company at this hearing.

The landlord gave sworn testimony that she served the respondents with a 10 Day Notice to End Tenancy for Unpaid Rent, dated January 5, 2015 ("10 Day Notice"), by posting it to the respondents' rental unit door on the same date. In accordance with sections 88 and 90 of the *Act*, I find that the respondents were deemed served with the 10 Day Notice on January 8, 2015, three days after its posting.

The landlord testified that she served each respondent with a separate copy of the landlord's Application for Dispute Resolution hearing package ("Application") on January 15, 2015, by way of registered mail. The landlord provided two Canada Post tracking

numbers, orally during the hearing. In accordance with sections 89 and 90 of the Act, I find that the respondents were deemed served with the landlord's Application on January 20, 2015, five days after its registered mailing.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

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

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

Background and Evidence

The landlord testified that this tenancy began on July 6, 2011 for a fixed term ending on January 31, 2012, after which it transitioned to a month to month tenancy. Monthly rent in the current amount of \$1,127.00 is payable on the 1st day of each month. A security deposit of \$550.00 was paid and the landlord continues to retain this deposit. A written tenancy agreement, which names a landlord company, NPL, as the landlord, was provided with the landlord's Application. The landlord testified that the name of the landlord company was changed from NPL to the current name, CARL, the company named in this Application, but that all tenancies and monies remained the same. The landlord testified that the respondents continue to reside in the rental unit.

The landlord testified that respondent PL is only an occupant in the rental unit, as he is named as an occupant in the tenancy agreement and he did not sign the tenancy agreement or the Notice of Rent Increase. Respondent PL also did not sign the landlord's application for tenancy, even though he was named as a co-applicant.

Under the tenancy agreement, the initial rent due was \$1,100.00. The landlord provided a Notice of Rent Increase, dated September 23, 2014, indicating that the new monthly rent of \$1,127.00, after a monthly increase of \$27.00, would be payable beginning on January 1, 2015. The landlord stated that she personally served this Notice of Rent Increase upon tenant SL on September 23, 2014 and that tenant SL signed the notice to confirm receipt. In accordance with section 88 of the Act, I find that tenant SL was served with this Notice of Rent Increase on September 23, 2014.

The landlord indicated that rent in the amount of \$325.00 is unpaid for December 2014. The landlord initially testified that, according to her rent ledger, partial payments of \$525.00 on December 15 and \$300.00 on December 24, 2014, were made by tenant SL towards this rent. When questioned as to why \$325.00 was claimed rather than \$275.00 owing for December 2014 rent, the landlord then stated that the payment on December 15 was only in the amount of \$425.00 not \$525.00. The landlord later indicated that \$425.00 was paid on December 14 not 15. The landlord stated that the rent owing for December 2014 was \$275.00 and then \$375.00. When questioned as to these different calculations made by the landlord, she indicated that she made an error and that English is her second language.

The landlord stated that rent in the amount of \$1,127.00 and late fees of \$25.00 are unpaid for each of January and February 2015. The landlord stated that these late fees are provided for in clause 6 of the tenancy agreement. The landlord testified that she was only seeking partial rent for February 2015, as she was seeking an order of possession effective immediately and would require the respondents to vacate the rental unit immediately.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$1,452.00 was due on January 1, 2015. The landlord indicated that the monetary breakdown for this amount was \$325.00 owing for December 2014 rent and \$1,127.00 owing for January 2015 rent. The notice indicates an effective move-out date of January 15, 2015. The landlord confirmed that no payments have been made by the respondents after service of the 10 Day Notice.

The landlord is also seeking to recover the filing fee of \$50.00 for this Application from the respondents.

Analysis

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

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that tenant SL caused a loss of rent and late fees for February 2015.

I find that respondent PL is not a “tenant” in this tenancy. Respondent PL did not sign the application for tenancy, the tenancy agreement or the notice of rent increase. He is listed as an occupant on the tenancy agreement and the landlord stated that he is an occupant. The landlord only referenced tenant SL as making rent payments during this tenancy. Accordingly, I find that only tenant SL is a “tenant” in this tenancy. Therefore, the monetary order issued in this decision is made against tenant SL only and not against respondent PL.

The landlord issued a Notice of Rent Increase, which is valid and in accordance with the *Act* and the *Residential Tenancy Regulation*. Tenant SL was required to pay rent of \$1,127.00 beginning on January 1, 2015.

The landlord provided undisputed evidence at this hearing, as the respondents did not appear. Tenant SL failed to pay the full rent due on January 1, 2015, within five days of being deemed to have received the 10 Day Notice. No partial rent payments were made by tenant SL after receiving the 10 Day Notice. Tenant SL 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 tenant SL to take either of these actions within five days led to the end of this tenancy on January 18, 2015, the corrected effective date on the 10 Day Notice. In this case, this required tenant SL and any other occupants on the premises to vacate the premises by January 18, 2015. As this has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

The landlord provided conflicting testimony regarding rent owed for December 2014. The landlord initially stated that \$325.00 was unpaid as per her Application details and the 10 Day Notice amount. She then indicated that \$275.00 and then \$375.00 was unpaid. The landlord’s initial testimony after checking the rent ledger for this tenancy, and before any calculations were made as to the discrepancy in the rent amounts, was

that the tenant paid a total of \$825.00 towards December 2014 rent. This leaves a balance of \$275.00 unpaid for December 2014. The landlord then changed her testimony. Accordingly, I find that, as per her initial testimony, the landlord is only entitled to \$275.00 in rental arrears for December 2014, as against tenant SL only.

The landlord provided undisputed evidence that tenant SL failed to pay \$1,127.00 for rent and \$25.00 for a late fee for January 2015. The late fee of \$25.00 is provided for in clause 6 of the tenancy agreement and is allowed under sections 7(1)(d) and 7(2) of the *Residential Tenancy Regulation*. Accordingly, I find that the landlord is entitled to \$1,127.00 in rental arrears and \$25.00 for a late fee for January 2015, as against tenant SL only.

Tenant SL and any other occupants were required to vacate the rental unit by January 18, 2015, as per the 10 Day Notice. Tenant SL remains in the rental unit, causing loss to the landlord under section 7(1). However, the landlord is required to mitigate her losses as per section 7(2) of the Act. As per the tenancy agreement, rent of \$1,127.00 for February 2015 was due on February 1, 2015. Tenant SL has not made any payments towards this rent. I find that the landlord is entitled to a half month's rent of \$563.50 in rental arrears and loss and a \$25.00 late fee for February 2015, as against tenant SL only. I find that the landlord is entitled to a half month's rent for February 2015, as she requested partial compensation and stated that she intended to pursue immediate possession of the rental unit. I find that this half month period is sufficient time for the landlord to serve the order of possession and obtain possession of the rental unit. I find that the landlord is entitled to the \$25.00 late fee, as against tenant SL only, as per the tenancy agreement and sections 7(1)(d) and 7(2) of the *Residential Tenancy Regulation*.

The landlord testified that she continues to hold tenant SL's security deposit of \$550.00. In accordance with the offsetting provisions of section 72 of the Act, I allow the landlord to retain tenant SL's security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that she is entitled to recover the \$50.00 filing fee paid for the Application, as against tenant SL only.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on tenant SL. Should tenant SL or any other occupant on the premises fail to

comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$1,515.50, as **against tenant SL only**, as follows:

Item	Amount
Unpaid December 2014 rent	\$275.00
Unpaid January 2015 Rent	1,127.00
January 2015 late fee	25.00
Unpaid February 2015 Rent (February 1 to 14, 2015)	563.50
February 2015 late fee	25.00
Less security deposit	-550.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$1,515.50

The landlord is provided with a monetary order in the amount of \$1,515.50 in the above terms and tenant SL must be served with this Order as soon as possible. Should tenant SL fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced 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: February 06, 2015

Residential Tenancy Branch

