



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC IMC REALTY CORPORATION O/A PANARAMA TOWER
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 its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1112 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions, and to call witnesses.

The agent testified that she served the tenant with the dispute resolution package (including all evidence before me) on 2 February 2015 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with this dispute resolution package pursuant to sections 89 and 90 of the Act.

The agent testified that she served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 22 January 2015 by posting the notice to the tenant's door. The landlord provided me with a witnessed proof of service document. On the basis of this evidence, I am satisfied that the tenant was deemed served with the 10 Day Notice pursuant to sections 88 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent? Is the landlord entitled to a monetary order 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

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.

On 25 June 2014, the landlord and tenant entered into a fixed-term tenancy agreement. The tenancy began 1 July 2014 and was set to end 6 June 2015. The agreement provides that at the end of the fixed-term tenancy, the tenant must vacate the rental unit. Monthly rent of \$1,335.00 is due on the first. The agent testified that the landlord continues to hold a security deposit in the amount of \$667.50, which was collected on 25 June 2014.

The landlord provided me with a copy of the tenancy agreement. Clause 3 of the agreement provides that the resident parking is provided pursuant to a separate agreement and that the tenant will be subject to a \$25.00 administrative fee for late payments or returned cheques. Clause 22 of the agreement is the liquidated damages clause:

In the event that the Tenant vacates the Premises before the end of the original term as set out in the Agreement, the landlord may, at the landlord's option treat this agreement as being at an end. In such event, the Tenant shall pay to the landlord not as a penalty but as liquidated damages the sum of \$300 for the reasonable costs incurred by the Landlord in re-letting the Premises, including legal costs, solicitor fees and the expense of keeping the Premises in good order and preparing the Premises for re-letting. The Landlord and the Tenant acknowledge and agree that payment of liquidated damages will not preclude the Landlord from exercising any further right of pursuing another remedy available in law or equity, including but not limited to, damage to the Premises and damages as a result of lost rental income due to the Tenant's breach of any term of the Agreement.

I was provided with a copy of a parking agreement. This agreement was dated 24 November 2014. The agreement set out that the tenant was to pay \$45.00 monthly for a parking stall. The agreement was signed by the tenant and the landlord's representative. The agent testified that the tenant has failed to pay three months of parking fees.

On 22 January 2015, the landlord issued the 10 Day Notice to the tenant. The 10 Day Notice was dated 22 January 2015 and set out an effective date of 4 February 2015. The 10 Day Notice set out that the tenant failed to pay \$2,840.00 in rent that was due on 1 January 2015.

The landlord seeks a total monetary order of \$4,027.50:

Item	Amount
Unpaid Late Fees prior to December	\$75.00
Unpaid November Rent	5.00
Unpaid December Rent	1,335.00
Unpaid January Rent	1,335.00
Unpaid February Rent	1,335.00
Late Fees x Dec, Jan, Feb	75.00
Parking Fees x Dec, Jan, Feb	135.00
Liquidated Damages	350.00
Less Retained Security Deposit	-667.50
Recover Filing Fee	50.00
Total Monetary Order Sought	\$4,027.50

The agent testified that the tenant owed \$2,840.00 in rent and late fees (five months of late fees) prior to 22 January 2015. The agent testified that the landlord has not received any payments since the issuance of the 10 Day Notice. The agent testified that to the best of her knowledge the tenant has not vacated the rental unit and is still occupying it.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving the tenant a notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made an application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of the tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by 4 February 2015. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The agent has provided sworn and uncontested testimony that the tenant has unpaid rental arrears totaling \$4,010.00. I find that the landlord has proven its entitlement to the rent arrears.

Paragraph 7(1)(d) of the *Residential Tenancy Regulations* (the Regulations) provides that a landlord may charge an administration fee of \$25.00 for late payment of rent. Pursuant to subsection 7(2) a late fee charge may only be applied if the tenancy agreement provides for that fee. The tenancy agreement provides for this fee at clause 3. I find that the landlord is entitled to charge the fee. I find that the tenant has paid rent late on six occasions. The landlord is entitled to recover \$25.00 per occasion.

The agent provided uncontested and sworn testimony that the tenant failed to pay parking stall fees for three months. Pursuant to paragraph 7(1)(g) a landlord may charge a tenant for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement. Parking facilities were not provided for under the tenancy agreement and were provided for under a separate agreement. I find that the landlord is entitled to a monthly non-refundable fee of \$45.00 from the tenant as compensation for the provision of parking facilities. The landlord is entitled to recover the unpaid parking fees from the tenant.

The landlord seeks liquidated damages from the tenant. The agent testified that the tenant is still occupying the rental unit. Clause 22 of the tenancy agreement provides, in part:

In the event that the Tenant vacates the Premises before the end of the original term as set out in the Agreement, the landlord may, at the landlord's option treat this agreement as being at an end. [emphasis added]

In this case, the tenant has not yet vacated the rental unit. The landlord is therefore premature in its application for liquidated damages. I dismiss this portion of the landlord's claim with leave to reapply should the landlord's claim crystallise.

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

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

Conclusion

The landlord's application for liquidated damages is dismissed with leave to reapply should the necessary conditions crystallise.

I issue a monetary order in the landlord's favour in the amount of \$3,677.50 under the following terms:

Item	Amount
Unpaid Late Fees prior to December	\$75.00
Unpaid November Rent	5.00
Unpaid December Rent	1,335.00
Unpaid January Rent	1,335.00
Unpaid February Rent	1,335.00
Late Fees x Dec, Jan, Feb	75.00
Parking Fees x Dec, Jan, Feb	135.00
Less Retained Security Deposit	-667.50
Recover Filing Fee	50.00
Total Monetary Order	\$3,677.50

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

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 25, 2015

Residential Tenancy Branch