



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, 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 and damages pursuant to section 67;
- authorization to retain all or a portion of the tenants' 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 tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 9:57 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord and his manager attended the hearing and were given a full opportunity to be heard, to present sworn testimony, and to make submissions. At the start of the hearing, the manager testified that the tenants had vacated the rental premises and, on behalf of the landlord, withdrew the application for an Order of Possession.

The landlord testified that he served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on January 20, 2014 by posting the notice on the rental unit door. On March 3, 2014, the tenants vacated the rental unit. The landlord testified that, on filing for dispute resolution on February 4, 2015, he hired a collection agent to acquire the tenants' new address as they had not provided a forwarding address or other contact information. The landlord testified that he served the tenants with individual copies of the landlord's dispute resolution hearing package by sending it via the United States Postal Service ("USPS") on February 10, 2015 to the new address.

The landlord submitted receipts and tracking information with respect to the two individual registered mailings through USPS. Residential Policy Guideline No. 12 ("Policy Guideline 12") describes the requirements for proof of service by registered mail. They should include the receipt given by the post office and the date of service,

the address of service, and that the address of service was the person's residence at the time of service. The tracking information supplied by the landlord included copies of the receipts with the date and address for service as well as confirmation of receipt of the packages by the named tenants. Under Policy Guideline 12 with respect to service of documents, it is provided that an arbitrator may find that a document not served in accordance with the service sections of the Legislation (in this case, through Canada Post) has been sufficiently given or served for the purposes of the Legislation. Based on the landlord's sworn testimony and the supporting documentary evidence, I find that the tenants have both been deemed served with the landlord's dispute resolution hearing package, including evidence, on February 15, 2015, 5 days after the mailing of the packages.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and damage arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenants' security deposit towards any monetary award?

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

Background and Evidence

This one year fixed term tenancy began on September 1, 2013. A rental amount of \$1725.00 plus utility costs were payable on the first of each month. The manager testified that the tenants abandoned the rental unit on March 3, 2014 providing no forwarding address. The landlord testified that the tenants' contact phone number was not functional and that he also attempted to email the tenants several times. He received no response. The landlord confirmed that he continues to hold a security deposit in the amount of \$862.50 paid by the tenants on August 23, 2013.

The manager, on behalf of the landlord, testified that the tenants were late paying rent in both September 2013 and October 2013. She testified that the tenants had not paid rent in full on several occasions prior to October 2013, leaving rental arrears outstanding. She testified that the tenants had not paid any rent since October 2013. The landlord sought a monetary order reflecting the rental arrears and unpaid rent for November 1, 2013 to March 31, 2014 totalling \$7710.00. The manager testified and provided documentary evidence, in the form of posted rental advertisements and a new signed tenant lease indicating that the unit was not re-rented until April 1, 2014. The landlord sought fees of \$25.00 per month for each late payment in September and October 2013.

The landlord sought a monetary award with respect to damages to the rental unit and loss to the landlord as a result of this tenancy. The manager testified, referring to the condition inspection report submitted in evidence that the residence was in moderate condition when the tenants moved in. The manager provided undisputed sworn testimony that, after the tenants left the residence, the unit was extremely unclean with a significant amount of debris, garbage and abandoned possessions. Photographs submitted by the landlord supported this testimony. The manager testified that she personally witnessed carpets that were filthy and sinks in the kitchen and bathroom that had been clogged with filthy, unidentifiable items. She also testified that closet doors were broken and blinds had been removed, unable to be located on the premises.

The landlord provided receipts with respect to the tenancy address as follows;

Item	Amount
General Cleaning	\$250.00
Carpet cleaning	327.60
Large item disposal/bin rental	213.15
Garbage removal	100.00
Outstanding utilities (156.08 + 89.93)	246.01
Repairs	584.78
Plumbing Service	206.31
Painting	216.00
Total Damage/Loss claimed by Landlord	\$2143.85

The landlord also sought to recover the \$100.00 filing fee in making this application.

Analysis

The landlord has shown, on a balance of probabilities that the tenants owe for unpaid rent, late fees, painting, plumbing, repairs, utilities, garbage removal, and disposal of the tenants' possessions, carpet cleaning and general cleaning.

Residential Tenancy Policy Guideline No. 30 addresses the nature of a fixed term tenancy. "A fixed term tenancy is a tenancy where the landlord and tenants have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date". In this tenancy, the agreement submitted by the landlord clearly provided a starting date of September 1, 2013 and an end date of August 31, 2014. Policy Guideline No. 30 also states that, during a fixed term tenancy, neither the landlord nor the tenants may end the tenancy except by agreement of both parties or for cause, including the breach of a material term of the tenancy. The tenants did not attend this hearing and therefore provided no evidence to suggest that they had offered a

reason or any notice to the landlord that they intended to end the tenancy before the agreed end date.

Section 67 of the *Act* provides that, if damage or loss results from a tenant (or landlord) not complying with the *Act*, regulations or the tenancy agreement, an arbitrator may order that tenant to pay compensation. Residential Policy Guideline No. 16 provides that an arbitrator can award a sum for out-of-pocket expenditures if those expenditures are proved at the hearing. The landlord has provided undisputed, sworn testimony with respect to the damage and loss from the tenancy, supported by photographs. The manager of the rental premises testified in detail as to the state of the rental unit at the end of tenancy. The landlord has also provided documentary evidence to prove his out-of-pocket expenditures. I find the necessity and cost of cleaning and repairs have been proven by the landlord.

Section 37 of the *Act* states that, when a tenant leaves a rental unit at the end of a tenancy, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. I accept the testimony of both the landlord and the manager at this hearing is that the tenants left the rental unit in a state of disarray, both extremely unclean and damaged in numerous ways. I accept their evidence that the landlord made efforts to re-rent the unit as soon as practicable and that, as of April 1, 2014, the rental unit was re-rented.

I find that the landlord is entitled to receive an order for unpaid rent in November and December 2013 as well as unpaid rent owing from January through to March 31, 2014. I accept the undisputed testimony by the landlord and manager that these rental amounts remain unpaid. The tenancy agreement also provides for late fees. I am issuing the attached monetary order that includes the landlord's application for \$7710.00 in 2013 rental arrears, and unpaid rent for November 2013 to March 31, 2014. The inclusion of March rent reflects the tenants' lack of notice and the landlord's inability to rent the premises for the month of March. The landlord is also entitled to \$50.00 reflecting late fees in September and October 2013, based on the testimony and supporting evidence that rent was paid late on these dates and the inclusion of a clause for late fees in the rental agreement.

The landlord testified that he continues to hold a security deposit of \$862.50 plus any interest from August 23, 2013 to the date of this decision for this tenancy. There is no interest payable over this period of time. I accept the undisputed testimony of the landlord that he was not provided with a forwarding address for the tenants.

Section 72(2)(b) of the *Act* allows an arbitrator to off-set any monetary claim of the landlord's with a security deposit that continues to be held. I allow the landlord to retain the tenants' \$867.50 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 \$100.00 filing fee paid for this application.

Conclusion

The landlord withdrew the application for an Order of Possession. That application is withdrawn.

I issue a monetary Order in favour of the landlords as follows:

Item	Amount
Cleaning, Disposal, Repairs	\$2143.85
Rental Arrears and Unpaid Rent - prior to October 2013 - unpaid rent for November, December 2013, January, February 2014	7710.00
Late Payment Fees for September, October 2013 (2 x \$25.00)	50.00
Less Security Deposit	-862.50
Recovery of Filing Fee for this application	100.00
Total Monetary Order	\$9141.35

The landlord is provided with formal Orders in the above terms. 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.

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: March 05, 2015

Residential Tenancy Branch