



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

matter regarding COLUMBIA PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied: to keep the Tenant's security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and, to recover the filing fee from the Tenant.

An agent for the Landlord (the "Landlord") appeared for the hearing and provided affirmed testimony as well as written evidence prior to the hearing. There was no appearance by the Tenant during the ten minute duration of the hearing or any submission of written evidence prior to the hearing. As a result, I turned my mind to the service of the documents for this hearing by the Landlord.

The Landlord testified that she served the Tenant with a copy of the Application and the Notice of Hearing documents by registered mail on March 20, 2015. The Landlord provided a copy of the Canada Post tracking number as evidence for this method of service. The Landlord testified that the Canada Post website indicated that the Tenant had received and signed for the documents on March 23, 2015.

The Landlord also explained that she had seen the Tenant since serving the documents and the Tenant explained that he would not be able to appear for the hearing as he was working a job to pay off the rental arrears. Based on the undisputed evidence of the Landlord, I find the Landlord served the Tenant with the required documents for this hearing pursuant to Section 89(1) (c) of the Act

The Landlord also explained that the Application had been made on behalf of her by another agent of the company Landlord who had got confused about the amount of

rental arrears owed by the Tenant. The Landlord explained that her monetary claim was for a total of \$600.00 and not \$950.00 as indicated on the Application.

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 for March and April 2015 and two late rent fees?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim?

Background and Evidence

The Landlord testified that this tenancy started on November 1, 2014 for a fixed term which is due to end on October 31, 2015. The parties completed a written tenancy agreement and rent is payable by the Tenant in the amount of \$650.00 on the first day of each month.

The Landlord explained that \$375.00 of the total rent is paid to the Landlord by a third party government agency on behalf of the Tenant, and the remaining \$275.00 is payable by the Tenant directly to the Landlord. The Tenant paid the Landlord a \$325.00 security deposit on October 31, 2014 which the Landlord still retains.

The Landlord testified that the Tenant failed to pay his portion of the total rent due on March 1, 2015. As a result, the Landlord personally served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on March 5, 2015. The Notice was provided into written evidence and shows an expected date of vacancy of March 15, 2015 due to \$300.00 in unpaid rent due on March 1, 2015.

The Landlord explained that the extra \$25.00 documented on the Notice was in relation to a late rent payment fee. The Landlord drew my attention to section b of the addendum to the signed written tenancy agreement titled 'Arrears', which requires the Tenant to pay a fee of \$25.00 for late rent payments.

The Landlord testified that the Tenant has also failed to pay his portion of the rent for April, 2015 in the amount of \$275.00. As a result, the Landlord seeks to now recover: unpaid rent for March and April 2015 in the amount of \$550.00 (\$275.00 x 2), and two late rent fees the same months in the amount of \$50.00 (\$25.00 x 2), as well as an Order of Possession for the rental unit.

Analysis

Having examined the Notice, I find that the contents on the approved form complied with the requirements of Section 52 of the Act. I also accept the Landlord's evidence that the Notice was served to the Tenant personally in accordance with Section 88(a) of the Act.

Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

There is no evidence before me that the Tenant paid the overdue rent or disputed the Notice. As a result, I find the Tenant is conclusively presumed to have accepted that the tenancy ended on the vacancy date of the Notice being March 15, 2015. As this date has now passed, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenant. This order may then be filed for enforcement in the Supreme Court of British Columbia as an order of that court.

Based on the undisputed written and verbal evidence of the Landlord above, I find the Landlord is also entitled to unpaid rent for March and April 2015 in the amount of \$550.00.

Section 7(d) of the *Residential Tenancy Regulation* allows a Landlord to charge a fee of no more than \$25.00 for late payment of rent which is documented in a tenancy agreement. Therefore, in accordance with section b of the signed tenancy agreement between the parties, I find that there is sufficient evidence to prove that the Landlord is entitled to the late rent fees. As a result, the Landlord is awarded \$50.00 relating to late payment for March and April 2015 rent.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the \$50.00 Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$650.00 (\$550.00 + \$50.00 + \$50.00).

As the Landlord already holds the Tenant's \$325.00 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is awarded a Monetary Order for the outstanding balance of \$325.00 (\$650.00 - \$325.00). This order must be served on

the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court.

Copies of the above orders for service and enforcement are attached to the Landlord's copy of this decision.

Conclusion

The Tenant has failed to pay rent. As a result, the Landlord is granted an Order of Possession effective **two days after service on the Tenant**.

The Landlord is allowed to keep the Tenant's security deposit and is granted a Monetary Order the outstanding amount awarded of **\$325.00**.

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: April 27, 2015

Residential Tenancy Branch

