



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord wrote the following in the details of the dispute:

REQUEST FOR ERNET FOR APRIL 2015 AND MAY 2015, REQUEST TO RETAIN THE SECURITY DEPOSIT OF \$475.00 PAID ON MAY 16, 2014 AND PET DEPOSIT OF \$475.00 PAID ON MAY 16, 2014, REQUEST FOR THE PRE-AGREED UPON LATE FEE IN CLAUSE 12 OF \$25.00 X 2

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to recover the payment for occupancy after the effective date of the 10 Day Notice and the late payment fees. Therefore, I amend the Landlord's application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on April 13, 2015, by the Landlord seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities; to keep the security and pet deposits; for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant.

The hearing was conducted via teleconference and was attended by the Landlord who gave affirmed testimony and the Landlord's Office Assistant who attended the hearing to observe. No one was in attendance on behalf of the Tenant.

The Landlord submitted documentary evidence that the Tenant was personally served with copies of the Landlord's application for dispute resolution and Notice of dispute resolution hearing, on April 15, 2015. The Landlord submitted a copy of the proof of

service document which indicates that the Tenant signed receipt of the hearing documents and application form. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding in accordance with section 89 of the Act, and I proceeded in absence of the Tenant.

Issue(s) to be Decided

- 1) Is the Landlord entitled to an Order of Possession?
- 2) Has the Landlord proven entitlement to a monetary order?

Background and Evidence

The Landlord submitted evidence that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on July 1, 2014 that was set to switch to a month to month tenancy after June 30, 2015. The Tenant was required to pay rent of \$950.00 on the first of each month. On May 16, 2014, the Tenant paid \$475.00 as the security deposit plus \$475.00 as the pet deposit.

The Landlord testified that when the Tenant failed to pay her April 1, 2015 rent in full a 10 Day Notice was posted to the Tenant's door on April 2, 2015 seeking \$655.00 in unpaid rent. The Landlord submitted that the Tenant had been making payments as follows: \$100.00 April 4, 2015; \$50.00 April 15, 2015; \$160.00 April 23, 2015; \$420.00 April 27, 2015; \$240.00 May 21, 2015; and \$400.00 on May 27, 2015. The Landlord stated that the Tenant was issued receipts for "use and occupancy only" for each payment and the current outstanding balance after May rent was applied was \$235.00 owing.

The Landlord asserted that they have been to dispute resolution on two previous occasions, and that they made it very clear to the Tenant that if they have to go to dispute resolution again they would be seeking the Order of Possession. The Landlord requested that the Order of Possession and Monetary Order be granted for the unpaid rent of \$235.00 plus the late payment fees for April and May 2015.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their evidence.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on April 5, 2015, three days after it was posted, and the effective date of the Notice is April 15, 2015. The

Tenant did not pay the rent in full and did not dispute the Notice. Therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **April 5, 2015** and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent for April 2015, in accordance with section 26 of the *Act* which stipulates a tenant must pay rent and fees in accordance with the tenancy agreement. Based on the submissions of the Landlord the Tenant made four payments throughout April 2015 which paid the April arrears in full and as of April 27, 2015, the Tenant had a credit balance of \$75.00. Accordingly, the Landlord's claim for unpaid rent is now moot and is dismissed.

As noted above, this tenancy ended **April 15, 2015**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for the month of May, 2015, in the amount of \$950.00, not rent. The Tenant made two payments towards use and occupancy in May 2015 totaling \$640.00 (\$240.00 + \$400.00) which leaves a balance owing of \$235.00 (\$950.00 – \$640.00 -\$75.00 credit). The Tenant remains in the rental unit and the Landlord will not regain possession of the unit until after service of the Order of Possession. Therefore, I conclude the Landlord is entitled to use and occupancy for the entire month of May 2015 of \$950.00 which leaves a balance owing of **\$235.00**.

The tenancy agreement provides for \$25.00 late payment fees in accordance with # 7 of the *Residential Tenancy Regulation*. The evidence supports the April 1, 2015 rent was late, as it was not paid in full until April 27, 2015. Therefore, I find the Landlord has proven entitlement to the late payment fee and I award their claim for April 2015 late fees in the amount of **\$25.00**.

As noted above, this tenancy ended **April 15, 2015**, in accordance with the 10 Day Notice. Provisions such as late payment fees provided in the tenancy agreement are no longer in effect once a tenancy has ended. Therefore, I find the Landlord is not entitled to claim late payment fees for May 2015, and the claim is dismissed, without leave to reapply.

Section 72(1) of the *Act* stipulates that 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.

The Landlord has primarily been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security and / or pet deposit plus interest as follows:

Use & occupancy May 2015	\$235.00
Late payment fee for April 2015	25.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$310.00
LESS: Pet Deposit \$475 + Interest 0.00	<u>-475.00</u>
Balance of Pet Deposit currently held by Landlord	<u>\$165.00</u>

Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord filed their application seeking to retain both the security and pet deposits. As noted above I Ordered the Landlord to offset their monetary award of \$310.00 against the Pet Deposit of \$475.00. Therefore, the Landlord remains in possession of the pet deposit balance of \$165.00 plus the security deposit of \$475.00. Accordingly, I Order the Landlord to disburse the \$165.00 pet deposit and the \$475.00 security deposit in accordance with section 38 of the Act, which has been copied to the end of this decision.

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: May 29, 2015

Residential Tenancy Branch

Residential Tenancy Act

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

Landlord may retain deposits if forwarding address not provided

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

