



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 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 the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend although the teleconference hearing continued until 9:50 a.m. The landlord was given full opportunity to be heard, to present evidence and to make submissions. A witness for the landlord also attended the hearing. The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent was served to the tenant on February 1, 2015 by posting the notice on his rental unit door. The landlord gave sworn testimony that he served the tenant by registered mail with the Application for Dispute Resolution hearing package on March 25, 2015. The landlord provided the Canada Post tracking information and submitted receipts for this mailing. He also testified that he had confirmed through Canada Post that the mailing had been picked up by the tenant. I accept that the tenant was deemed served with the Application for Dispute Resolution hearing package on March 30, 2015, 5 days after its registered mailing.

The landlord testified that, after receiving the 10 Day Notice the tenant vacated the rental unit. The landlord withdrew his application for an Order of Possession.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain the tenant's security deposit in partial

satisfaction of the monetary order? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord gave evidence that the rental agreement for the premises began on November 1, 2014. The rental amount was established at \$1300.00 payable on the first of each month. The landlord testified that he continued to hold the \$500.00 security deposit that the tenant paid on or about December 30, 2014. The tenant vacated the rental unit on or about February 28, 2015.

The landlord originally applied for an Order of Possession for unpaid rent for the months of December 2014, January 2015 and February 2015. The landlord testified that the tenant did not pay rent of \$1300.00 due on November 1, 2014, December 1, 2014, January 1, 2015, February 1, 2015. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on February 10, 2015. The landlord testified that, in January 2015, the tenant paid \$1300.00 which he applied to the November 2014 rent. He provided a receipt and told the tenant that this amount was accepted for "use and occupancy only". The landlord testified that the tenant has made no other rental payments.

The landlord testified that he had been lenient with the tenant because they had been family friends for many years. He testified that their agreement was for her to occupy the rental premises while they attempted to sell the house. They had negotiated a lower rent than had been advertised and allowed the tenant time before she was required to pay her security deposit. Before filing for dispute resolution, he testified that they attempted to arrange payment plans and other negotiable settlements with the tenant. They had no success.

The landlord withdrew his application for an Order of Possession as the tenant had vacated the rental unit. The landlord sought a monetary award of \$3900.00 for unpaid rent for the months of December 2014, January 2015 and February 2015. The landlord also testified that he sought an amount for unpaid utilities. He submitted a rental agreement that does not indicate the landlord is responsible for utilities as part of the rental payment. The agreement does not speak to utilities at all. The landlord sought to retain the tenant's security deposit towards any award and to recover the filing fee for this application.

Analysis

Pursuant to section 26 of the *Act*, a tenant is required to pay their rent in full and on time. There are very few exceptions to this rule. The tenant failed to pay rent as required by the *Act* for at least three months. The tenant failed to pay the outstanding rent for this tenancy within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* to dispute the end of tenancy or the landlord's claim of unpaid rent. The tenant vacated the rental unit however the landlord testified that the unpaid rent remains outstanding.

I find that the landlord is entitled to receive an order for unpaid rent in December 2014, January 2015 and February 2015. The landlord testified that he was able to re-rent the premises as of April 1, 2015. The landlord did not seek the rental loss for March 2015 as he testified that he did not wish to burden his family friend beyond the obligation of the rent while she resided in the rental unit. I accept this uncontested evidence offered by the landlord that a total of three months' rent remains outstanding. I am issuing the attached monetary order that includes the landlord's application for \$3900.00 in unpaid rent for three months.

The landlord also applied for an amount for unpaid utilities. He provided copies of the written tenancy agreement which did not indicate what portion of the utilities either party was responsible for. He also did not provide copies of the bills relating to the tenancy. Therefore, I do not find that the landlord is entitled to recover any monetary amount with respect to utilities.

The landlord testified that he continues to hold a security deposit of \$500.00 plus any interest from January 11, 2014 to the date of this decision. There is no interest payable for this period. Based on the landlord's testimony and supporting evidence that rent remains unpaid for three months of this tenancy, I will allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 72(2) of the *Act*.

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

Conclusion

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

Rental Arrears for December 2014	\$1300.00
Rental Arrears for January 2015	1300.00
Rental Arrears for February 2015	1300.00
Less Security Deposit	-500.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$3450.00

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: May 07, 2015

Residential Tenancy Branch

