



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OBION HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MND, O, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67;
- other unspecified remedies; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The landlord's two agents, RE ("landlord") and "landlord CT," and the tenant attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that he was the president of the landlord company named in this application. Landlord CT is the caretaker of the rental building that is the subject of this application and she provided limited submissions at this hearing.

The tenant confirmed receipt of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 10, 2015 ("current 10 Day Notice"), by way of posting to the tenant's rental unit door on the same date. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's current 10 Day Notice on March 10, 2015.

The landlord testified that he served the tenant with the landlord's application for dispute resolution hearing package ("Application") on March 23, 2015 by way of email, on March 27, 2015 by way of posting to the rental unit door and on April 25, 2015, by way of placing it under the tenant's rental unit door. The tenant confirmed receipt by way of email and placing under her door. Although email and placing documents under the door are not service methods that are permitted under section 89 of the *Act*, the tenant confirmed receipt of the landlord's Application and advised that she had a chance to review the Application. Based on the sworn testimony of the parties, I find that there would be no denial of natural justice in proceeding with this hearing and considering the landlord's Application. Accordingly, I find that the tenant was sufficiently served with the landlord's Application for the purposes of section 71(2)(c) of the *Act*.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent and for damage to the rental unit?

Is the landlord entitled to other unspecified remedies?

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

Background and Evidence

Both parties agreed that this tenancy began on July 1, 2009 for a fixed term of one year, after which it transitioned to a month to month tenancy. Monthly rent in the amount of \$1,172.00 is currently payable on the first day of each month. The landlord provided copies of two notices of rent increase, which increased the rent from the original amount of \$1,095.00 in the tenancy agreement to the current amount of \$1,172.00. A security deposit of \$547.50 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit. The landlord provided a copy of the tenancy agreement.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 12, 2015, with an effective move-out date of February 22, 2015 ("first 10 Day Notice"). The landlord stated that this first 10 Day Notice was not pursued because an agreement was reached with the tenant, allowing her to pay February 2015 rent on February 18 and 28, 2015. The landlord confirmed that the tenant paid February 2015 rent in full.

The landlord issued the current 10 Day Notice, indicating that rent in the amount of \$1,172.00 was due on March 1, 2015. The current 10 Day Notice indicates an effective move-out date of March 20, 2015.

The landlord seeks a monetary order of \$3,516.00 for unpaid rent. Both parties agreed that rent of \$1,172.00 is unpaid for each month from March to May 2015, totalling \$3,516.00. The tenant indicated that she did not pay rent because there were multiple issues with the rental unit during this tenancy, including problems with silverfish and cleanliness of a kitchen hood fan. The landlord denied being notified of any problems with silverfish and indicated that the landlord cleaned the kitchen hood fan.

The landlord also seeks \$47.00 for each of March and April 2015, totalling \$94.00, for administrative and bank fees for the tenant's two NSF cheques. The tenant agreed that her cheques for March and April 2015 were returned for insufficient funds. The landlord stated that \$40.00 for administrative fees for NSF cheques or late payments are provided for at clause 25 of the tenancy agreement. The landlord stated that \$7.00 in NSF fees was also charged by his bank for each of March and April 2015, totalling \$14.00, because the tenant's cheques were returned for insufficient funds. The landlord provided a copy of the March 2015 returned cheque showing insufficient funds and an April 2015 bank statement showing the \$7.00 returned

cheque fee. The landlord confirmed that he is not seeking any bank or administrative fees from the tenant for May 2015, as he did not attempt to cash the tenant's rent cheque for this month.

The landlord claims for \$120.00 for cleaning the kitchen hood fan. The landlord provided an invoice, dated February 28, 2015, for this amount, stating that the landlord paid for this cost because the tenant refused to clean the fan. The landlord stated that a "previous hearing" was held before a different arbitrator on March 26, 2015, after which a "previous decision" was issued on March 27, 2015. The file number for this previous hearing appears on the front page of this decision. The previous decision dismissed the tenant's application for an order for the landlord to repair the kitchen hood fan as well as for monetary compensation for the fan dripping grease and spoiling the tenant's food. The landlord stated that he attempted to join his Application at this hearing today with the tenant's application at the previous hearing, but that his Application was made too late and the tenant did not consent to having both claims heard at the same time. The landlord indicated that he does not believe the invoice was available at the previous hearing for the tenant's application. The landlord indicated that the fan was cleaned in order to satisfy the arbitrator at the previous hearing that the fan was cleaned and in working order. The tenant agreed that the landlord cleaned the kitchen hood fan sometime in March 2015, but that it was the landlord's responsibility to do so and nothing was done to clean it for over 5 years, during her tenancy. The tenant indicated that the fan was still not properly clean at this time.

The landlord is also seeking to recover the filing fee of \$50.00 for this Application from the tenant.

Analysis

Section 26 of the *Act* requires a tenant to pay rent when it is due under the tenancy agreement, regardless of whether the landlord complies with the *Act*, regulation or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of rent. The tenant did not provide any evidence that she had a right to deduct any amounts for rent including for emergency repairs or pursuant to an order from the Director.

The tenant failed to pay the full rent due on March 1, 2015, within five days receiving the current 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving the current 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on March 20, 2015, the effective date on the current 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by March 20, 2015. As this has not occurred, I find that the landlord is entitled to a 5 day Order of Possession.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a

landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Both parties agreed that the tenant failed to pay rent of \$1,172.00 for each of March and April 2015. Therefore, I find that the landlord is entitled to \$2,344.00 in rental arrears for the above period.

The tenant was required to vacate the rental unit by March 20, 2015, the effective date on the 10 Day Notice. As per the landlord's evidence, the tenant continues to reside in the rental unit, causing loss to the landlord under section 7(1) of the *Act*. Rent of \$1,172.00 was due on May 1, 2015. However, the landlord is required to mitigate his losses as per section 7(2) of the *Act*. Therefore, I find that the landlord is entitled to half a month's rent from May 1 to 15, 2015, in the amount of \$586.00. The landlord testified during the hearing that he intended to re-rent the unit immediately, even mid-month if possible. I find that this period is sufficient time for the landlord to examine the rental unit, repair any potential damage, as well as advertise the unit for re-rental.

Both parties agreed that the tenant's rent cheques were returned for insufficient funds in March and April 2015. The tenancy agreement provides that \$40.00 may be charged as an administrative fee for late payments or NSF cheques. The tenancy agreement also states that bank fees for NSF cheques may be recovered in addition to this administrative fee. Section 7(1)(c) of the Residential Tenancy Regulation ("Regulation") permits a landlord to charge a tenant a service fee charged by a financial institution for the return of the tenant's cheque. I accept the landlord's testimony and documentary evidence that \$7.00 was charged by his bank for the return of the tenant's two cheques for March and April 2015, totalling \$14.00. Accordingly, I find that the landlord is entitled to \$14.00 for bank service fees from the tenant.

Section 7(1)(d) of the Regulation permits the landlord to charge a maximum of \$25.00 for an administration fee for the return of a tenant's cheque or for late payment of rent. This administration fee must be provided for in the tenancy agreement, as per section 7(2) of the Regulation. Accordingly, the landlord is only entitled to a maximum of \$25.00 for each of March and April 2015, totalling \$50.00, for administration fees for the return of the tenant's rent cheques and late payments of rent.

I dismiss the landlord's claim for \$120.00 for cleaning the kitchen hood fan. The landlord did not show that the kitchen fan required cleaning for emergency reasons. The previous decision noted that the landlord testified that the tenant signed the tenancy agreement requiring her to clean and maintain sanitary standards in the rental unit and promptly report any repair or damage. The landlord denied any knowledge that the tenant asked for repair of the fan at the start of the tenancy. The landlord testified at this hearing that the cleaning was done to satisfy the arbitrator at the previous hearing that the fan was clean and in proper working order. However, the previous decision indicated that it was not the responsibility of the landlord but rather of the tenant to clean the hood fan. The landlord was not required to perform this

cleaning and undertook it of his own accord, rather than awaiting the decision of the arbitrator at the previous hearing. Accordingly, I find that the landlord is not entitled to recover this \$120.00 amount from the tenant.

The landlord continues to hold the tenant's security deposit of \$547.50. Although the landlord did not apply to retain this security deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$547.50 in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this Application, I find that the landlord is entitled to recover the \$50.00 filing fee from the tenant.

Although the landlord attempted to amend his application to claim for damage to the rental unit blinds at the hearing, he did not provide notice of this application to the tenant, prior to this hearing. During the hearing, I advised the landlord that he could make a future application for dispute resolution with respect to this claim.

Conclusion

I grant an Order of Possession to the landlord effective **five days after service of this Order** on the tenant. Should the tenant or any other occupants on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$2,496.50 against the tenant as follows:

Item	Amount
Unpaid March 2015 Rent	\$1,172.00
Unpaid April 2015 Rent	1,172.00
Loss of May 1-15, 2015 Rent	586.00
Bank NSF Fees for March and April 2015	14.00
Maximum Administration Fees for March and April 2015	50.00
Less Security Deposit	-547.50
Recovery of Filing Fee for this Application	50.00
Total Monetary Award	\$2,496.50

The landlord is provided with a monetary order in the amount of \$2,496.50 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to

comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's application for "other" unspecified relief is dismissed, as the landlord did not provide any evidence with respect to this claim.

The landlord's application for a monetary order in the amount of \$120.00 for cleaning the kitchen fan is dismissed.

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 04, 2015

Residential Tenancy Branch

