



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Homelife Peninsula Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPB, OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing concerns the landlord's application for an order of possession / a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from December 01, 2014 to May 31, 2015. The agreement clearly provides that at the end of the fixed term, the "Tenant shall vacate the Premises..." Monthly rent of \$670.00 is due and payable in advance on the first day of each month, and a security deposit of \$335.00 was collected.

Arising from rent which remained unpaid when due on May 01, 2015, the landlord issued a 10 day notice to end tenancy dated May 04, 2015. The notice was personally served on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is May 14, 2015. Thereafter, the tenant made payment of \$670.00 on June 17, 2015. The landlord applied this payment towards unpaid rent for May 2015. No rent was paid for June 2015. As to rent due for July 2015, the landlord's agent testified that a cheque is in hand from the Ministry. The tenant still presently continues to reside in the unit.

A new renter was scheduled to move into the unit on June 01, 2015. However, as the tenant did not vacate as required on May 31, 2015, the new renter has still been unable

to take possession and is staying with friends / family. As a result, the landlord seeks associated compensation which includes, but is not limited to, travel, food, storage and accommodation costs for which the landlord has reimbursed the new renter.

Analysis

Based on the documentary evidence and testimony, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated May 04, 2015. The tenant did not pay the outstanding rent within 5 days of receiving the notice, and did not apply to dispute the notice. The tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlord has established entitlement to an **order of possession**.

As for compensation, I find that the landlord has established a claim of **\$1,293.75**:

\$670.00: *unpaid rent for June 2015*

Section 26 of the Act addresses **Rules about payment and non-payment of rent**, in part:

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

As noted above, rent paid by the tenant on June 17, 2015 was applied against unpaid rent of \$670.00 for May 2015. No rent was subsequently paid for June 2015. In the absence of any evidence that the tenant has “a right under this Act to deduct all or a portion of rent” for June 2015, I find that the landlord has established entitlement to the full amount claimed.

\$160.00: *the total of cumulative shortfalls in rent over several months*

Based principally on a ledger submitted by the landlord, I find that the landlord has established entitlement to the full amount claimed.

\$12.50: *fee assessed for stop payment of cheque*

It is understood that the new renter incurred this charge as a result of having to put a stop payment on the rent cheque for June 2015. This action arose from the tenant's failure to vacate the unit on May 31, 2015, and the new renter's resulting inability to take possession of the unit on June 01, 2015. The landlord reimbursed the new renter for this fee. Following from all of the foregoing, I find that the landlord has established entitlement to the full amount claimed.

\$39.00: *Translink fares*
\$96.60: *ferry travel*
\$51.75: *hotel*
\$113.90: *meals*
\$100.00: *storage*

I find that the above costs were incurred by the new renter and reimbursed by the landlord, in association with the new renter's inability to take possession of the unit effective June 01, 2015 as had been agreed. In summary, I find that the landlord has established entitlement to the full amount claimed of **\$401.25**.

\$11.34: *Canada Post registered mail*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the application is hereby dismissed.

\$50.00: *filing fee*

As the landlord has succeeded with the main aspects of the application, I find that the landlord has also established entitlement to recovery of the filing fee.

Total entitlement: \$1,293.75

I order that the landlord retain the security deposit of **\$335.00**, and I grant the landlord a **monetary order** for the balance owed of **\$958.75** (\$1,293.75 - \$335.00).

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant.

Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$958.75**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

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: July 20, 2015

Residential Tenancy Branch

