



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR OPB MNR MNDC FF
For the tenants: CNR FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied for an order of possession for unpaid rent or utilities, for an order of possession for breach of a tenancy agreement, for a monetary order for unpaid rent or utilities, for monetary compensation 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. Tenant I.R. applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated May 23, 2015, and to recover the cost of the filing fee.

On July 7, 2015, the hearing was adjourned and on July 9, 2015, an interim decision was issued which should be read in conjunction with this decision. The hearing was reconvened on September 2, 2015 at 9:30 a.m., Pacific Time. At the reconvened hearing, the tenant and the landlord attended, as did a witness for the tenant, S.M., the tenant’s mother.

The parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

Further to my orders contained in my interim decision dated July 9, 2015, the parties confirmed that the landlord was served with the tenant’s documentary evidence as per my orders. I find the parties were sufficiently served in accordance with the *Act* as a result.

Preliminary and Procedural Matters

The tenant was advised that the his application was now moot, as he vacated the rental unit on June 30, 2015 and that I did not need to consider his application to cancel the 10 Day Notice dated May 23, 2015 as the tenancy had already ended on June 30, 2015, the day he vacated the rental unit. As a result, the tenant's filing fee will not be granted as the application is moot. The landlord confirmed that he was no longer seeking an order of possession as the tenant returned possession of the rental unit back on June 30, 2015 when the tenant vacated the rental unit.

During the hearing, the landlord was advised that his claim for damages and cleaning costs was premature, as the landlord filed his application for damages and cleaning costs prior to the end of the tenancy. As a result, the landlord is at liberty to reapply for damages and cleaning costs; however, I will only consider the landlord's claim for unpaid rent, late fees and the recovery of the filing fee at this proceeding.

Issues to be Decided

- Is the landlord entitled to a monetary order for unpaid rent and a late fee under the *Act*, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on July 1, 2014 and ended on June 30, 2015. Monthly rent in the amount of \$1,780 was due on the first day of each month. The tenant paid a security deposit of \$890 at the start of the tenancy, which the landlord continues to hold.

The landlord has claimed \$1,805 in unpaid rent and a late fee comprised of the following:

ITEM DESCRIPTION	AMOUNT
1. Unpaid June 2015 rent	\$1,780
2. Late fee for June 2015 rent	\$25
TOTAL	\$1,805

The tenant denied that he failed to pay June 2015 rent and referred to a note submitted in evidence which was written on a piece of paper that indicates that witness J.G.

witnessed the tenant pay the landlord \$1,780 on June 1st at 11:00 a.m. at his residence. The tenant confirmed that the witness was not present to be cross-examined and that the note was of limited evidentiary value as a result. The landlord testified that the tenant has never paid June 2015 rent to date and continues to owe June 2015 rent of \$1,780, plus a late fee of \$25 in accordance with the tenancy agreement addendum submitted in evidence.

The tenant testified that he paid the landlord \$1,780 in cash at 11:00 a.m. on June 1, 2015, comprised of seventeen \$100 bills, and four \$20 bills, which the landlord denies. The tenant then called his mother S.M. as a witness. Witness S.M. came to the phone after a five minute delay, a delay of which the tenant described as time trying to locate his mother in the home. Without being asked any questions, witness S.M. immediately began to testify that she was present when her son paid the rent on June 1, 2015 at which time the witness was directed to stop. As the witness had been obviously coached by the tenant regarding her testimony, the witness and the tenant were advised that I could not accept the witness testimony that was clearly tainted by the tenant.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

Claim for unpaid rent – As I find the tenant obviously coached witness, S.M., I afford no weight to the witness testimony of witness S.M. I afford little weight to the note submitted by the tenant from J.G. as J.G. was not present during the hearing to testify or be cross-examined. Therefore, I find the tenant has provided insufficient evidence to support that rent was paid in cash to the landlord for the month of June 2015 in the amount of \$1,780. Section 26 of the *Act* requires that rent be paid on the date it is due in accordance with the tenancy agreement. Given the above, I find the landlord has met the burden of proof and prefer the evidence of the landlord, which was consistent the entire time during the hearing that the tenant failed to pay any rent for June 2015. I find the addendum to the tenancy agreement submitted in evidence, supports that the tenant was aware of the \$25 late fee for any late payments of rent. As a result, I find the landlord is entitled to **\$1,780** for unpaid June 2015 rent, plus **\$25** for the late fee for June 2015.

As the landlord has succeeded with their application, I grant the landlord the recovery of their **\$50** filing fee.

Monetary Order – I find the landlord has established a total monetary claim of **\$1,855**, comprised of \$1,780 in unpaid rent, \$25 for a late fee, plus the \$50 filing fee.

I ORDER the landlord to retain the tenants' full security deposit of \$890 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$965**. This order is made in accordance with section 72 of the *Act*.

As noted above, the landlord is at liberty to reapply for damages and cleaning costs as those matters have not been considered.

Conclusion

The tenants' application is dismissed as it is moot given that the tenants have vacated the rental unit.

The landlord's application is successful.

The landlord has proven a monetary claim of \$1,855 and has been ordered to retain the tenants' full \$890 security deposit in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order for the balance owing by the tenants to the landlord in the amount of \$965. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: September 2, 2015

Residential Tenancy Branch

