



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL R.E.S. LTD.
and [tenant name suppressed to protect privacy]

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 rent 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 this hearing, although I waited until 9:44 am in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 am. Three representatives attended the hearing on behalf of the landlord and were given a full opportunity to be heard, to present sworn testimony, and to make submissions. Landlord JA testified that the tenant vacated (or abandoned) the rental unit on February 26, 2016 without providing any notice of his intention to vacate the unit. The landlords withdrew the application for an Order of Possession with respect to this rental unit.

Landlord JA testified that the tenant was served with a 10 Day Notice to End Tenancy ("10 Day Notice") by registered mail on January 5, 2016 to the rental unit address. The landlord testified that the tenant was served with the landlord's Application for Dispute Resolution package ("ADR") on January 20, 2016 by registered mail to the rental address. I find, based on the testimony and the Canada Post information submitted by the landlord that the tenant was deemed served with the 10 Day Notice on January 10, 2016 and that the tenant was served with the ADR on January 25, 2016 (both 5 days after their registered mailings).

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to retain the tenant's security deposit toward a monetary award?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

Landlord JA ("the landlord") gave evidence that the residential tenancy agreement began on December 16, 2015. The rental amount for this unit was established at \$900.00. The landlord testified that she continued to hold the \$437.50 security deposit paid by the tenant on December 16, 2015. The landlord applied to retain that security deposit towards a monetary award for unpaid rent and rental loss.

The landlord testified that the tenant did not pay rent of \$900.00 due on January 1, 2016. The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent was issued by registered mail to the tenant at the rental address. The landlord testified that the tenant did not pay the January 2016 rent after receiving the 10 Day Notice on January 10, 2016. The landlord testified that the tenant did not pay rent for February 2016 and another 10 Day Notice to End Tenancy for Unpaid Rent was issued to the tenant.

The landlord testified that the tenant vacated the rental unit on or about February 26, 2016. She testified that the tenant left the keys at the on-site property manager's office and that the tenant left the majority of his belongings behind, including garbage and furniture. The landlord testified that the tenant did not provide any indication prior to vacating the unit that he intended to do so.

The landlord sought a monetary award of \$1800.00 for the months of January and February 2016 in unpaid rent as well as \$50.00 in late charges/fees for 2 unpaid months. The landlord referred to the residential tenancy agreement that indicates a \$25.00 late fee for late or unpaid rental amounts.

The landlord sought to amend their application to include rental loss for March 2016. The landlord testified that a substantial amount of personal belongings were left behind in the rental unit and that the unit required repair and cleaning. Furthermore, the landlord testified that, as the tenant provided no notice and vacated the rental unit 3

days prior to the end of the month; the unit has not yet been re-rented as of the date of this hearing.

Analysis

I find that the landlord is entitled to receive an order for unpaid rent for the months of January and February 2016 totaling \$1800.00. The landlord provided sworn undisputed testimony that the tenant failed to pay any of the monthly rent for the months of January and February 2016. The landlord provided a copy of a 10 Day Notice to End Tenancy issued January 8, 2016 as well as a 10 Day Notice issued in February 2016 to support their position that the rental amounts were not paid.

The landlord also applied for \$50.00 in fees for late payment of rent for January and February 2016. She provided copies of the written tenancy agreement which established this late payment fee. I find that the landlord is entitled to a \$25.00 late fee for the month of January 2016 and another \$25.00 late fee for the month of February 2016.

The landlord testified that she has been unable to re-rent the premises for March 2016 as of the date of this hearing. She testified that considerable cleaning and refurbishing of the premises were required following the tenant vacating the rental unit and leaving all of his belongings behind. While I accept this uncontested evidence offered by the landlord, I find that she has not sufficiently notified the tenants that she would seek this further amount at this hearing. The landlord did not make a formal amendment to her application. The landlord did not serve the tenants with any form of notice that she would be seeking to recover lost rent for March 2016. Furthermore, the tenants vacated the residence prior to March 2016 and therefore they would not necessarily have anticipated that the landlord would seek this further amount. I find it would not meet the standards of the Dispute Resolution Rules of Procedure or the intention of the *Residential Tenancy Act* to provide a fair hearing to allow this portion of the application. Therefore, I dismiss this portion of the landlord's application.

The landlord testified that she continues to hold a security deposit of \$437.50.00 plus any interest from December 16, 2015 to the date of this decision for this tenancy. There is no interest payable for this period. I will allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlord withdrew the application for an Order of Possession.

I dismiss with leave to reapply the landlord's application to recover March 2016 rental loss.

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

Rental Arrears for January 2016	\$900.00
Rental Arrears for February 2016	900.00
Late Payment Fee for 2 months (\$25.00 each)	50.00
Less Security Deposit	-437.50
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$1462.50

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: March 08, 2016

Residential Tenancy Branch

