



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on February 18, 2016. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agent (the landlord) appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

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

- Is the landlord permitted to keep all or part of the tenant's security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testified that this tenancy started on January 01, 2013 with another tenant. This tenant moved into the unit and was added to the tenancy agreement on October 28, 2015. The original tenant was removed from the tenancy agreement in January, 2016. Rent for this unit is \$750.00 per month due on the 1st of each month. A security deposit of \$375.00 was paid on December 18, 2012.

The landlord testified that the tenant failed to pay the rent on February 01, 2016 leaving an unpaid balance of \$750.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on February 05, 2016. This was posted on the tenant's door and was deemed to have been served three days after. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on February 15, 2016. The tenant did not pay the outstanding rent or file an application to dispute the Notice. The tenant made a rent payment of \$700.00 on February 17, 2016. This left an unpaid balance of \$50.00. The tenant failed to pay rent for March on the day it was due but did make a payment of \$800.00 on March 16, 2016. The tenant has failed to pay rent for April, 2016 and has an outstanding balance of \$750.

The landlord testified that the tenancy agreement provides for a fee of \$25.00 being charged for late fees for any month in which rent is not paid on the day it is due. The landlord seeks to recover a late fee of \$75.00 for February, March and April, 2016.

The landlord has applied to retain the tenant's security deposit of \$375.00 in partial payment of the rent arrears. The landlord has also applied for an Order of Possession.

Analysis

I have considered the evidence before me, including the sworn testimony of the landlord. I refer the parties to s. 26 of the *Act* which states:

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.

I am satisfied from the evidence before me that there is outstanding rent for April of **\$750.00**. Consequently, it is my decision that the landlord is entitled to recover this amount.

With regard to the landlord's claim to recover \$75.00 for late fees for February, March and April , 2016; I refer the parties to the Residential Tenancy Regulations s. 7(1)(d) and s. 7(2)(e) which states:

7 (1) *A landlord may charge any of the following non-refundable fees:*

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I have reviewed the tenancy agreement and find there is a clause contained in the agreement that provides for an administrative fee of \$25.00 for late fees. Consequently, pursuant to s. 7(1)(d) of the regulations I find the landlord is entitled to recover **\$75.00** in late fees.

I Order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$375.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$100.00** filing fee for this proceeding.

The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent	\$750.00
Late fees	\$75.00
Filing fee	\$100.00
Less security deposit and accrued interest	(-\$375.00)
Total amount due to the landlord	\$550.00

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted on the tenant's door it was deemed served three days after posting on February 08, 2016. The effective date of the Notice is therefore amended to February 18, 2016 pursuant to s. 53 of the *Act*. The tenant did not pay all the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I grant the landlord an Order of Possession effective two days after service upon the tenant pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$550.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the tenant; if the tenant fails to comply with the Order, The Order is enforceable through the Provincial (Small Claims) Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favor of the landlord effective two days after service upon the tenant. This Order must be served on the tenant; if the tenant fails to comply with the Order, the Order may be filed in the Supreme 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: April 06, 2016

Residential Tenancy Branch