



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, 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 and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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 their filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed evidence. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on February 24, 2016. The landlord has submitted a copy of the Canada Post Customer Tracking Receipt as confirmation. The landlord also stated that an online search of the Canada Post Website shows that the tenant signed in receipt of the package on February 25, 2016. I accept the undisputed affirmed evidence of the landlord and find that the tenant has been properly served with the notice of hearing package and the submitted documentary evidence that the tenant was served via Canada Post Registered Mail on February 24, 2016 as per sections 88 and 89 of the Act. The tenant is deemed served 5 days later as per section 90 of the Act.

The landlord clarified at the outset that the tenant had abandoned the rental unit as of February 26, 2016 without any notice and that the landlord has regained possession of the rental premises as of that date. The landlord seeks to amend the application by

withdrawing the application for an order of possession. The landlord also seeks to lower the monetary claim to \$766.00 from the original \$2,206.00.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 1, 2015 on a fixed term tenancy ending on July 31, 2016 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated July 27, 2015. The monthly rent is \$720.00 payable on the 1st day of each month and a security deposit of \$360.00 was paid on July 31, 2015.

The landlord issued the 10 Day Notice to the tenant and served it to the tenant in person on February 10, 2016. The 10 Day Notice was dated February 10, 2016 and set out an effective date of February 23, 2016. The 10 Day Notice set out that the tenant failed to pay \$725.00 in rent that was due on February 1, 2016. The rental arrears included \$720.00 from February 2016 and \$5.00 from January 2016 rent.

The landlord testified that he has not received any payments since February 10, 2016.

The landlord also seeks a \$41.00 Security Call Out charge for attending the tenant's rental premises on January 10, 2016 as the tenant had locked themselves out of the rental unit and required assistance in unlocking the door. The landlord has submitted a copy of an invoice dated February 12, 2016 for this charge.

The landlord also seeks to retain the \$360.00 security deposit in partial satisfaction of the claim.

The landlord claims for rental arrears totaling \$2,206.00:

Item	Amount
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Unpaid January 2016 Rental Arrears	5.00
Unpaid February 2016 Rent	\$720.00
Security Call Out Charge/No Key	41.00
Offset Claim with Security Deposit	-360.00
Recovery of Filing Fee	100.00
Total Monetary Order Sought	\$506.00

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant vacated the rental unit on February 26, 2016 and abandoned the unit without notice to the landlord.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by February 23, 2016.

The landlord has provided sworn and uncontested testimony that the tenant has unpaid rental arrears totaling \$766.00. I find that the landlord has proven his entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent (\$720.00), rental arrears (\$5.00) and the security call out charge (\$41.00).

The landlord testified that she continued to hold the tenant's \$360.00 security deposit, plus interest, paid on July 31, 2015. Over that period, no interest is payable. The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the security deposit 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 \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$506.00 under the following terms:

Item	Amount
Unpaid January 2016 Rental Arrears	5.00
Unpaid February 2016 Rent	\$720.00
Security Call Out Charge/No Key	41.00
Offset Claim with Security Deposit	-360.00
Recovery of Filing Fee	100.00
Total Monetary Order Granted	\$506.00

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as 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 12, 2016

Residential Tenancy Branch