



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WENDEB PROPERTIES INC

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 and utilities 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;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant confirmed service of the application for dispute resolution.

Issues

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

A written tenancy agreement was entered into and signed by the parties on April 12, 2012. A copy of the written agreement was provided on file. The tenancy began on May 1, 2012 with a monthly rent of \$800.00 payable on the 1st day of each month. The monthly rent was later reduced to \$755.00 per month. The tenant paid a security deposit of \$400.00 and a pet deposit of \$200.00 at the start of the tenancy. The landlord testified that she continued to hold this \$600.00 security deposit.

The landlord's application included a claim for a monetary award of \$1395.00 for outstanding rent as of the date of the application, March 23, 2016. The landlord provided a ledger of outstanding rent dating back to December 31, 2014. At the hearing, the landlord asked to amend her claim to include outstanding rent in the amount of \$755.00 that was payable on April 1, 2016 and a payment received in the amount of \$1000.00 on April 1, 2016, leaving a balance of \$1150.00 outstanding. Although the tenant did not have prior notice of this claim, I found that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the amendment.

The tenant agreed to the amount of outstanding rent as claimed by the landlord with the exception of a \$25.00 NSF fee charged. The landlord agreed to waive this fee reducing the claim to \$1125.00.

The landlord testified that on March 8, 2016 she served the tenant with the 10 day Notice to End Tenancy for unpaid rent or utilities by posting a copy to the door of the rental premises.

The tenant acknowledged service of the 10 day Notice and that he did not pay the full amount of the arrears indicated, within five days, of receiving the Notice.

Analysis

I am satisfied that the tenant was deemed served with the 10 day Notice to End Tenancy on March 11, 2016, three days after its posting, pursuant to sections 88 & 90 of the Act.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, March 23, 2016.

I find that the tenant was obligated to pay monthly rent in the amount of \$755.00 but failed to pay rent dating back to December 31, 2014. I accept the landlord's claim for outstanding rent of \$1125.00.

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 for a total monetary award of \$1225.00.

The landlord testified that she continues to hold a security deposit of \$600.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$625.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$625.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 28, 2016

Residential Tenancy Branch