



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: OPR OPC OPB MNR MNDC FF
For the Tenant: CNR FF

Introduction

This hearing dealt with cross-applications by the parties for Applications for Dispute Resolution under the *Residential Tenancy Act* (the “Act”). The tenant applied to cancel a 10 Day Notice to End for Unpaid Rent or Utilities (the “10 Day Notice”) dated February 29, 2016 and to recover the cost of the filing fee. The landlord applied for an order of possession based on a 10 Day Notice, a 1 Month Notice for Cause, based on the tenant breaching an agreement with the landlord, for a monetary order for unpaid rent or utilities, 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.

The landlord attended the teleconference hearing which began promptly on Tuesday, April 19, 2016 at 9:30 a.m. Pacific Time by conference call as per the Notice of a Dispute Resolution Hearing provided to both parties. The line remained open while the phone system was monitored for 15 minutes and the only participant who called into the hearing during this time was the landlord who was ready to proceed. After the ten minute waiting period, the tenant’s application was **dismissed in full, without leave to reapply**.

The hearing continued with consideration of the landlord’s application. As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), the Application for Dispute Resolution (the “Application”) and documentary evidence were considered. The landlord confirmed service of the Notice of Hearing, Application and documentary evidence on the tenant. Based on the undisputed testimony of the landlord and without any evidence to the contrary I am satisfied the tenant has been sufficiently served in accordance with the *Act*.

Preliminary and Procedural Matters

During the hearing, the landlord testified that since the landlord’s application was filed, the tenant vacated the rental unit as of April 1, 2016. Given the above, the landlord requested to

withdraw her request for an order of possession as the tenant has already returned possession of the rental unit back to the landlord as of April 1, 2016. In addition, the landlord requested that since the tenant vacated the rental unit, she would like to retain the tenant's security deposit to offset any monetary order if she is so entitled under the *Act*.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act* and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- 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 month to month tenancy began on February 15, 2014. Monthly rent of \$850.00 was due on the 15th day of each month. The tenant paid a security deposit of \$425.00 at the start of the tenancy which the landlord continues to hold.

The landlord provided a monetary breakdown which indicates that she is seeking \$2,240.00 comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid portion of February 2016 rent owing (time period of January 15, 2016 to February 14, 2016)	\$440.00
2. Unpaid March 2016 rent (February 15, 2016 to March 14, 2016)	\$850.00
3. Loss of April 2016 rent (March 15, 2016 to April 14, 2016)	\$850.00
4. Recovery of cost of filing fee	\$100.00
TOTAL	\$2,240.00

The landlord testified that since the tenant did not vacate the rental unit until April 1, 2016, she is seeking loss of rent as described above for April 2016, which covers the period of March 15, 2016 to April 14, 2016.

The landlord submitted a copy of the tenancy agreement, 10 Day Notice, 1 Month Notice, proof of service documents, and a monetary order worksheet in evidence.

Analysis

Based on the landlord's undisputed documentary evidence and testimony provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant did not attend the hearing and the tenant's application has been dismissed, I find that the landlord's monetary claim is unopposed by the tenant.

As the tenant did not vacate the rental unit until April 1, 2016, I find that the landlord has suffered a loss of April 2016 rent which covers the time period of March 15, 2016 to April 14, 2016. Given the above, I find the landlord has met the burden of proof in proving her monetary claim in the full amount of **\$2,240.00** which includes the recovery of the cost of the \$100.00 filing fee as the landlord's application has merit.

Pursuant to section 72 of the *Act*, I authorize the landlord to retain the tenant's full security deposit of \$425.00 in partial satisfaction of the landlord's monetary claim, and I grant the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of **\$1,815.00**.

Conclusion

The tenant's application has been dismissed in full, without leave to reapply.

The landlord's application is successful.

The landlord has been authorized to retain the tenant's full security deposit of \$425.00 in partial satisfaction of the landlord's monetary claim and the landlord has been granted a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of \$1,815.00. Should the landlord require enforcement of the monetary order, the monetary order must be served on the tenant and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, except as 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: April 25, 2016

Residential Tenancy Branch