



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR OPR FF

Introduction:

Both parties attended the hearing and the tenant agreed they received the 10 Day Notice to end Tenancy dated March 4, 2016 taped on the door and the Application for Dispute Resolution by registered mail. I find that the tenant was properly served with the documents according to sections 88 and 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order of Possession pursuant to Sections 46, and 55; and
- d) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy dated March 4, 2016 for unpaid rent. Is the landlord now entitled to an Order of Possession and to a Monetary Order for rental arrears and filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced in October 2013, a security deposit of \$725 was paid and rent is currently \$1504 a month. When the tenant received the 10 Day Notice, he confirmed they owed \$1529 plus \$25 late fee. Rent was raised to \$1529 as of March 1, 2016. The parties agreed that the tenant paid \$400 in cash in March and then paid all the outstanding rent on May 1, 2016 with the exception of late fees of \$25 for each of March and April 2016.

The tenant said after he paid on May 1, 2016, the landlord tried to withdraw May's rent again and the bank charged him a \$45 NSF fee for the extra withdrawal left his account short. The property manager said she could not check this as it is a big company and the accountant would not be able to verify this now but the NSF charge would be credited to him at a future date if that was the case. The landlord requests to retain the full security deposit to be dealt with after the tenant vacates in accordance with section

38. The landlord requests an Order of Possession. Although the tenant has paid his rent, the landlord issued a receipt “for use and occupancy only” as they did not wish to reinstate the tenancy as he has had several late payments.

In evidence is the Notice to End Tenancy, Notices of Rent Increases and the tenancy agreement. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Order of Possession

I find that the landlord is entitled to an Order of Possession. There was outstanding rent which the tenant did not pay within 5 days of issuance of the Notice to End Tenancy and he did not make an Application pursuant to Section 46 to set aside the Notice and the time to do so has expired. When he did pay the balance, I find the landlord accepted payment for “use and occupancy only” as they did not wish to reinstate the tenancy. In these situations, the Residential Tenancy Act provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. An Order of Possession is issued effective May 31, 2016 as agreed by the landlord.

Monetary Order

I find that there are rental arrears in the amount of \$50 representing late fees of \$25 for each of March and April 2016 but there is no late fee for May as the tenant paid on May 1, 2016. However, I find the tenant’s evidence credible that he incurred a bank charge of \$45 due to the landlord mistakenly trying to deduct payment for May’s rent after it was already paid. I find him entitled to have this amount deducted from what he owes.

Conclusion:

I find the landlord is entitled to an Order of Possession effective May 31, 2016 and a monetary order as calculated below. I find the landlord is entitled to recover filing fees paid for this application. The security deposit will remain in trust to be dealt with in accordance with section 38 of the Act after the tenant has vacated.

Calculation of Monetary Award:

Late fees for March and April 2016	50.00
Filing fee	100.00
Less deduction for NSF fee to tenant	-45.00
Total Monetary Order to landlord	105.00

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: May 04, 2016

Residential Tenancy Branch