



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FORREST TERRACE APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to retain all or part of the tenant's security deposit, 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.

Two agents for the landlord (the "agents") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agents were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The agents testified that the Notice of Hearing, Application and documentary evidence were served on the tenant by registered mail on April 5, 2016. A copy of the registered mail tracking number customer receipt was submitted in evidence. The tracking number has been included on the cover page of this decision for ease of reference. The agents stated that as of the date of the hearing, they have not received the registered mail package back in the mail. Agent E.J. testified the tenant continues to occupy the rental unit and was last seen at the rental unit the day before the hearing. According to the online registered mail tracking information, the package was in the process of being returned to sender as the package was never signed for and accepted by the tenant.

Section 90 of the Act states that documents served by registered mail are deemed served five days after they are mailed. Based on the above, I find the tenant was duly served with the Notice of Hearing, Application and documentary evidence on April 10,

2016, which is five days after the date the registered mail package was mailed on April 5, 2016. I note that refusal or neglect to pick up and accept a registered mail package does not constitute grounds for a review consideration.

Preliminary and Procedural Matter

The agents testified that in addition to the rent owed for March 2016, the landlord has suffered a loss of rent for the months of April and May of 2016 as the tenant continues to occupy the rental unit without paying rent or for use and occupancy of the rental unit. As a result, the agents requested to amend the application to include loss of rent for the two additional months of April and May of 2016 at \$790.00 for loss of rent for each of the two additional months, \$25.00 for unpaid parking fees for each of the two additional months, and \$50.00 for the NSF fees for the tenant's returned rent cheques for each of the two additional months. Pursuant to section 64(3) of the *Act*, I find that the landlord's request is reasonable and that the tenant would know or would ought to know that since the tenant continues to occupy the rental unit that monthly rent and parking fees are still due on the first of each month in accordance with the tenancy agreement.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, 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 fixed term tenancy began on October 1, 2012 and reverted to a month to month tenancy after September 30, 2013. Currently, the monthly rent is \$790.00 and is due on the first day of each month. The tenant also signed a parking agreement for \$25.00 per month for parking. The tenant paid a security deposit of \$375.00 at the start of the tenancy which the landlord continues to hold.

The agents confirmed service of the 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") dated March 14, 2016, by posting on the tenant's door. The 10 Day Notice included an effective vacancy date of March 24, 2016 and indicated that \$790.00 was

owed as of March 1, 2016. The tenant did not dispute the 10 Day Notice and did not pay the full amount of rent owed within five days of receiving the 10 Day Notice.

The agents testified that the landlord has suffered a loss of rent, parking fees and NSF fees for March, April or May of 2016. As a result, the landlord's total monetary claim is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid March 2016 rent	\$790.00
2. Unpaid March 2016 parking fee	\$25.00
3. Unpaid March 2016 NSF fee	\$50.00
4. Loss of April 2016 rent	\$790.00
5. Loss of April 2016 parking fee	\$25.00
6. NSF fee for April 2016 cheque returned as insufficient funds	\$50.00
7. Loss of May 2016 rent	\$790.00
8. Loss of May 2016 parking fee	\$25.00
9. NSF fee for May 2016 cheque returned as insufficient funds	\$50.00
10. Recovery of cost of filing fee	\$100.00
TOTAL	\$2,695.00

The landlord submitted the tenancy agreement with parking information and a section related to NSF fees, registered mail tracking customer receipt, 10 Day Notice, condition inspection report, and tenant account ledger in evidence.

Section 8 of the tenancy agreement indicates that an NSF fee of \$50.00 will be charged for all NSF fees, which will be addressed further below.

Analysis

Based on the undisputed documentary evidence and oral testimony provided by the agents during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenant failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The effective vacancy date of the Notice is listed as March 24, 2016 which automatically corrects pursuant to section 53 of the *Act* to March 27, 2016 as the 10 Day Notice was

posted to the tenant's door on March 14, 2016. I find the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the corrected effective vacancy date of the 10 Day Notice, which was March 27, 2016. The tenant continues to occupy the rental unit. Therefore, I **grant** the landlord an order of possession effective **two (2) days** after service on the tenant.

Claim for unpaid rent, loss of rent, parking fees and NSF fees – Firstly, as the tenant was served and did not attend the hearing, I find the Application of the landlord is unopposed by the tenant. Although the landlord's Application is unopposed I find that section 8 of the tenancy agreement exceeds the maximum allowable \$25.00 amount for NSF fees permitted under section 7(1)(d) of the *Residential Tenancy Act Regulation*. As a result, I find that the landlord is not entitled to \$50.00 for each NSF fee, and is only entitled to the maximum \$25.00 amount for each NSF fee for the months of March, April and May of 2016.

In addition and pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$2,620.00** comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid March 2016 rent	\$790.00
2. Unpaid March 2016 parking fee	\$25.00
3. Unpaid March 2016 NSF fee	\$25.00
4. Loss of April 2016 rent	\$790.00
5. Loss of April 2016 parking fee	\$25.00
6. NSF fee for April 2016 cheque returned as insufficient funds	\$25.00
7. Loss of May 2016 rent	\$790.00
8. Loss of May 2016 parking fee	\$25.00
9. NSF fee for May 2016 cheque returned as insufficient funds	\$25.00
10. Recovery of cost of filing fee	\$100.00
TOTAL	\$2,620.00

As the landlord has succeeded with their application, I **grant** the landlord the recovery of the filing fee in the amount of **\$100.00**.

The landlord is holding a security deposit of \$375.00 which was paid by the tenant at the start of the tenancy and has accrued no interest since the start of the tenancy.

Monetary Order – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit plus interest as follows:

Total monetary claim described above including recovery of the cost of the filing fee	\$2,620.00
<i>(Less tenant's security deposit including \$0.00 interest)</i>	<i>-(\$375.00)</i>
TOTAL BALANCE OWING BY TENANT TO LANDLORD	\$2,245.00

In the future, the landlord is cautioned not to exceed the allowable amounts described in the *Act* and *Regulation*.

Conclusion

The landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$2,620.00 as indicated above. The landlord is authorized to retain the tenant's full security deposit of \$375.00 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of \$2,245.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless 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: May 5, 2016

Residential Tenancy Branch