



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNR, MND, MNDC, MNSD, O, FF; O, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for breach of an agreement with the landlord, pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits (collectively "deposits") in partial satisfaction of the monetary order requested, pursuant to section 38;
- other unspecified remedies; and
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- other unspecified remedies; and
- authorization to recover the filing fee for her application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 23 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with the landlord's dispute resolution hearing notice and application on July 4, 2016, by way of registered mail. The landlord provided a Canada Post receipt and tracking number with his application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on July 9, 2016, five days after its registered mailing.

The landlord testified that the tenant was served with the landlord's written evidence package on August 7, 2016, by way of registered mail. The landlord provided a Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the Act, I find that the tenant was deemed served with the landlord's written evidence package on August 12, 2016, five days after its registered mailing. I advised the landlord that I could not consider any of his written evidence at this hearing as it was deemed received by the tenant late, less than 14 days prior to this hearing, contrary to Rule 3.14 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. However, I did consider the parties' written mutual agreement to end tenancy, dated June 9, 2016, as both parties signed a copy and the tenant would presumably have a copy of this agreement, as she referred to it in her own application against the landlord.

At the outset of the hearing, I advised the landlord that his application for a monetary order for damage to the rental unit and other losses, totalling \$5,800.00, was premature. The landlord applied for costs of lawn maintenance, cleaning and removal of garbage and other items, moving and storage fees, and garage repair costs. The landlord confirmed that he did not have possession of the rental unit, as the tenant still resides there, and he did not know the full extent of any potential damages caused by the tenant, nor the exact amount of any such losses. Accordingly, I notified the landlord that his application for a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, was dismissed with leave to reapply.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

Issues to be Decided

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

Is the landlord entitled to retain the tenant's deposits in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for his application?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on January 1, 2016 for a fixed term ending on March 31, 2017, after which the tenant is required to move out. Monthly rent in the amount of \$1,250.00 is payable on the first day of each month. A security deposit of \$625.00 and a pet damage deposit of \$625.00 were paid by the tenant and the landlord continues to retain both deposits. Both parties signed a written tenancy agreement. The tenant continues to reside in the rental unit.

The landlord seeks a monetary order of \$1,500.00 in rental loss for each month from July to August 2016, totaling \$3,000.00. The landlord also seeks to recover the \$100.00 filing fee paid for his application.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. Based on the landlord's testimony and the written mutual agreement to end tenancy signed by both parties to end the tenancy on June 30, 2016, I find that the landlord is entitled to an Order of Possession effective two (2) days after service on the tenant, pursuant to section 55 of the *Act*. I find that both parties signed a copy of this agreement on June 9, 2016 and I accept the landlord's testimony that both parties had witnesses view the signing.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month in this case. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$1,250.00 for each month from July to August 2016. I do not accept the landlord's submission that he could have rented the unit for \$1,500.00 per month to other tenants, if the tenant had vacated as per the parties' mutual agreement. The tenant was only

obligated to pay \$1,250.00 per month for rent as per her tenancy agreement and she continues to live in the rental unit. Therefore, the tenant only owes the amount of rent as per her tenancy agreement. Accordingly, I find that the landlord is entitled to \$2,500.00 in rental arrears for the above time period.

I advised the landlord that his application to recover \$10.71 in registered mailing costs for his application were not recoverable, as the only hearing-related costs that are recoverable under the *Act* are for filing fees. Accordingly, this portion of the landlord's application is dismissed without leave to reapply.

As the landlord was mainly successful in this Application, I find that he is entitled to recover the \$100.00 filing fee paid for his Application.

The landlord continues to hold the tenant's deposits, totalling \$1,250.00. Over the period of this tenancy, no interest is payable on the deposits. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's deposits of \$1,250.00, in partial satisfaction of the monetary award.

Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain the tenant's entire security and pet damage deposits, totalling \$1,250.00, in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$1,350.00 against the tenant. The tenant must be served with this Order as soon as possible. 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.

The landlord's application for other unspecified remedies is dismissed without leave to reapply, as he did not provide any evidence about this claim at this hearing.

The landlord's application for registered mail costs of \$10.71 is dismissed without leave to reapply.

The landlord's application for a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement is dismissed with leave to reapply.

The tenant's entire application is dismissed without leave to reapply.

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: August 15, 2016

Residential Tenancy Branch

