



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOLLYBURN ESTATES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, MND, 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 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, regulation or tenancy agreement 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 landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package and the first documentary evidence package via Canada Post Registered Mail on July 29, 2016. The landlord provided in her direct testimony the Canada Post Customer Receipt Tracking number as confirmation and stated that the package was returned by Canada Post as "unclaimed" after repeated attempts of service were made. The landlord also stated that the second documentary evidence package was personally served to the tenant on September 2, 2016 on which the tenant signed in receipt of service. I accept the undisputed affirmed evidence of the landlord and find that pursuant to section 88 and 89 of the Act that the tenant was properly served with the notice of hearing package and the submitted documentary evidence. The tenant is deemed served 5 days later as per section 90 of the Act.

Preliminary Issue

The landlord seeks an amendment to increase the monetary claim from \$1,315.00 to \$2,050.80. The landlord seeks to add cleaning and damage claims totalling, \$735.08. The landlord failed to properly file the amendment application and instead submitted it within the body of the documentary evidence. The tenant was not served with the amended application, but was given the documents within the second documentary evidence provided by the landlord. I find that as the landlord has failed to properly file and serve the tenant with amended application for dispute and is thus limited to the original amount claimed for unpaid rent. The landlord is at liberty to apply for dispute over the cleaning and damages claim in a separate application.

The landlord also stated that the tenant had vacated the rental unit on July 31, 2016 and seeks to cancel the request for an order of possession as it is unnecessary. As such, no further action is required for this portion of the landlord's claim for an order of possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit, for money owed or compensation for damage of loss and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on February 1, 2014 on a fixed term tenancy until January 31, 2015 as shown by the submitted copy of the signed tenancy agreement dated December 31, 2013. The monthly rent was \$1,225.00 which was later increased as a result of a notice of rent increase to \$1,290.00. A security deposit of \$612.50 was paid on December 31, 2013.

The landlord seeks a monetary claim of \$1,315.00 which consists of unpaid rent of \$1,290.00 for July 2016 and \$25.00 for a late rent fee.

The landlord provided undisputed affirmed evidence that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 8, 2016. The 10 Day Notice sets out that the tenant failed to pay rent of \$1,315.00 (\$1,290.00 in unpaid rent and \$25.00 for a late rent fee) that was due on July 1, 2016 and provides an

effective end of tenancy date of July 18, 2016. The landlord stated that the 10 Day Notice was posted to the rental unit door on July 8, 2016 and has submitted a copy of a proof of service document confirming this in the presence of a witness.

The landlord also specified that there is also a provision for late rent fees of \$25.00 as shown in section 3.03 of the signed tenancy agreement.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by July 18, 2016. The tenant had vacated the rental unit on July 31, 2016.

The landlord has provided affirmed and uncontested evidence that the tenant has unpaid rental arrears totaling \$1,290.00 and a late rent fee of \$25.00. I find that the landlord has proven their entitlement to the rent arrears and the late rent fee. The landlord is entitled to a monetary order for the unpaid rent and the late rent fee.

The landlord testified that he continued to hold the tenant's \$612.50 security deposit, plus interest, paid on December 31, 2013. Over that period, no interest is payable. Using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

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.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$802.50 under the following terms:

Item	Amount
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Unpaid July 2016 Rent	\$1,290.00
Late Rent Fee	25.00
Offset Security Deposit	-612.50
Recovery of Filing Fee	100.00
Total Monetary Order	\$802.50

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders 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: September 14, 2016

Residential Tenancy Branch