



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax Check Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The original hearing was conducted via teleconference on August 23, 2016 and was attended by one agent for the landlord; the tenant and his advocate. I adjourned the hearing to allow the landlord to submit new evidence and allow the tenant to reserve the landlord with his evidence, as outlined in my Interim Decision dated August 23, 2016.

The hearing was reconvened on this date and was attended by the same people at the first hearing as well as an additional agent from the landlord.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on May 13, 2014 for a 1 year fixed term tenancy beginning on June 1, 2014 that converted to a month to month tenancy beginning June 1, 2015 for a monthly rent of \$1,050.00 due on the 1st of each month with a security deposit of \$525.00 paid;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on June 7, 2016 with an effective vacancy date of June 21, 2016 citing the tenant had failed to pay rent in the amount of \$1,050.00 on June 1, 2016.

The tenant submitted that he paid the landlord \$525.00 on June 11, 2016, after receiving the 10 Day Notice on June 7, 2016. I note the landlord has recorded in their tenant ledger the \$525.00 was received on June 13, 2016.

The tenant testified that the landlord received an additional \$525.00 for rent by way of a money order he purchased on April 15, 2016. The tenant submitted that he obtained that money order as a partial payment for rent for the month of May 2016.

However, he states that an acquaintance of his (RL) had stolen the money order. The tenant further submitted that RL provided the money order to the landlord. The tenant confirmed that as of the date of this hearing he has not reported the theft of his money order to the police.

The landlord acknowledges that RL approached their office indicating that he wanted to be a tenant in the rental unit. The landlord stated that a couple of days before RL attended their office he had been seen at the rental unit. The landlord submits that they provided RL with an application for tenancy and accepted the money order as a pet damage deposit accredited to the rental unit.

They stated that they later spoke with the owner of the property who advised them they would not accept the applicant RL as long as he had the dog. The landlords submitted that they have issued a cheque to the RL but they do not have contact information for RL and have not been able to provide the cheque to him.

Analysis

Section 19 of the *Act* stipulates a landlord must not require or accept a security deposit or a pet damage deposit that is greater than the equivalent of $\frac{1}{2}$ of one month's rent payable under the tenancy agreement.

While normally, a landlord can only request a pet damage deposit at the start of a tenancy or when a tenant brings a pet into the rental unit I find in the case before me I find the landlords did accept a pet damage deposit from the third party.

Despite the landlord's position that they have issued a cheque payable to RL that they have not been able to provide to him, I find in accrediting the pet damage deposit to this tenancy I find the landlord now currently holds a pet damage deposit subject to this tenancy agreement.

As the tenancy agreement stipulates that MM is the only tenant I find the landlords must treat the security deposit as paid on MM's behalf and are obligated to treat the pet damage deposit has paid by him.

Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations

or the tenancy agreement, unless the tenant has the right under this *Act* to deduct all or a portion of the rent.

Section 19 also states that if a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Based on the evidence of both parties, I find the landlord has not collected a security deposit that is greater than the amount allowed under Section 19. As a result, I find the only way the tenant could use the pet damage deposit to pay rent or a portion thereof is regulated under Section 21.

Section 21 of the *Act* stipulates that unless the landlord gives written consent, a tenant must not apply a security deposit or a pet damage deposit as rent.

There is no evidence before me that the tenant had written consent from the landlord. In fact, it is clear from the positions of both parties that the landlord also never verbally agreed the tenant could use the pet damage deposit as rent.

As a result, I find the tenant has not paid rent in full for the month of June 2016.

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

Section 46(4) allows the tenant to either pay the rent or file an Application for Dispute Resolution to dispute the notice within 5 days of receipt of the notice.

Section 46(5) states that if a tenant who has received a notice under this section does not pay the rent or make an Application for Dispute Resolution to dispute the notice within the allowed 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

As per my finding above, I note the tenant did not pay the full amount of rent identified in the 10 Day Notice within 5 days and has not filed an Application for Dispute Resolution seeking to cancel the 10 Day Notice to End Tenancy for Unpaid issued on June 7, 2016. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy and he must vacate the rental unit.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$625.00** comprised of \$525.00 rent owed and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct this amount from the security deposit and pet damage deposit held in the amount of \$1,050.00 in satisfaction of this claim, leaving a balance of \$425.00 to be dispersed in accordance with the *Act* at the end of the tenancy.

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 15, 2016

Residential Tenancy Branch