



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CKV PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was dealt a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid and/or loss of rent and cleaning costs; and, authorization to retain the security deposit and pet damage deposit. The tenant did not appear at the hearing. The landlord testified that personally served the tenant with the hearing documents and evidence on May 30, 2016 at a trailer on a First Nations Reserve in the presence of his wife as a witness. The landlord's wife signed a written statement confirming service. Based upon the unopposed evidence before me I accepted that the tenant had been served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

At the outset of the hearing I confirmed that the landlord had previously been provided an Order of Possession under the Direct Request process (file number recorded on cover page of this decision) and the tenant no longer occupies the rental unit. As such, the landlord's request an Order of Possession with this Application is unnecessary and I do not provide one with this decision. The remainder of this decision deals with the landlord's monetary claims against the tenant.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant in the amounts claimed?
2. Is the landlord authorized to retain the tenant's security deposit and pet damage deposit?

Background and Evidence

The one-year fixed term tenancy started January 1, 2016 and was set to expire on December 31, 2016. The tenant paid a security deposit of \$367.50 and a pet damage deposit of \$367.50.

The tenant failed to pay rent for April 2016 and on April 2, 2016 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door with a stated effective date of April 15, 2016. The tenant did not pay the outstanding rent or file to dispute the 10 Day Notice. The landlord made an Application for Dispute Resolution by Direct Request on April 28, 2016

seeking an Order of Possession. An Adjudicator reviewed the Application and granted an Order of Possession to the landlord on May 5, 2016 requiring the tenant to vacate within two days of receiving the Order of Possession.

The landlord testified that he received the Order of Possession from the Residential Tenancy Branch on May 12, 2016 and served it upon the tenant that day; however, the tenant did not vacate within two days. Rather, the tenant made repeated assurances to the landlord via text message that he would move out but he did not fulfill those assurances. The landlord provided print outs of several text messages exchanged between the parties with a view to show the tenant made repeated assurances that he would be moving out and then did not. It was not until May 27, 2016 that the tenant moved out.

The landlord testified that due to the tenant's failure to move out when required, the landlord lost rent for May and June 2016 as well. The landlord explained that he did not seek a Writ of Possession or the services of the court bailiff because the cost to do so would approximate \$2,000.00 and that loss of rent of June was \$725.00 so he decided to try to work with the tenant in an effort to have the tenant move out on his own.

The landlord testified that the tenant did not leave the rental unit sufficiently clean. On May 28, 2016 the landlord paid to have the carpets cleaned and two hours were spent cleaning the unit by the landlord. The landlord testified that he was successful in re-renting the unit starting July 1, 2016.

The landlord seeks to recover unpaid and loss of rent from the tenant for the months of April 2016, May 2016 and June 2016. The landlord also seeks to recover carpet cleaning costs of \$140.00 and \$50.00 for two hours of cleaning.

In reviewing the text messages submitted into evidence by the landlord I noted that it appeared as though the landlord had removed the tenant's entry door from the rental unit on May 1, 2016. The landlord had communicated this to the tenant and informed the tenant that his dog was running loose. In response the tenant requested multiple times for the landlord to put the door back on as he was at work, that he was concerned for his possessions, and that what the landlord did was unlawful. The landlord responded by telling the tenant that what he did was not illegal and that the tenant should leave work and come home.

During the hearing, I strongly cautioned the landlord that his actions were in fact unlawful. The landlord explained that he took this action because he needed to serve the tenant with the Applicant for Dispute Resolution by Direct Request and the tenant had been avoiding him. The landlord stated that did not permit the tenant's dog to run loose but put the dog in a kennel for safe keeping and kept watch on the rental unit to ensure the tenant's possessions were not stolen. The landlord stated that the door was only off for a few hours. I informed the landlord that The Act prohibits landlords from seizing a tenant's personal property (the dog) without a court order. Further, since the landlord was seeking an Order of Possession by way of his

Application, I informed that landlord that permissible service included posting the Application on the door of the rental unit.

The landlord stated that the tenant had called the police on May 1, 2016 and the police also informed him that what he did was not appropriate. I put the landlord on notice that his actions could be a basis for the tenant to pursue him for breach of the Act and Administrative Penalties being levied by the Director. The landlord stated that he understood. The landlord assured me that he would not remove a door from a rental unit again.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due under their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. Since the parties executed a fixed term tenancy agreement, the tenant is obligated to fulfill the fixed term and may be held liable to pay rent until the expiry of the fixed term.

I accept the unopposed evidence before me that the tenant was required to pay rent of \$725.00 for the month of April 2016 and failed to do so. I also accept the unopposed evidence that the tenant remained in possession of the unit until May 27, 2016 and the landlord re-rented the unit effective July 1, 2016 without any payment of rent from the tenant for the months of May or June 2016. Since the tenant did not vacate the rental unit by effective date on the 10 Day Notice of April 15, 2016, and did not vacate the rental unit as ordered by way of the Order of Possession, I find the tenant further violated the Act and I accept that his actions resulted in further loss of rent for the landlord. I am satisfied that the landlord took reasonable steps to mitigate losses by trying to get the tenant to vacate on his own rather than enlist the more costly services of a bailiff. Therefore, I find the landlord entitled to recover unpaid and loss of rent from the tenant for the months of April, May and June 2016 in the sum of \$2,175.00 [\$725.00 x 3 months].

Under section 37 of the Act, a tenant is required to leave the rental unit reasonably clean. Although the tenancy was relatively short in duration, the tenant had a dog in the rental unit. Residential Tenancy Branch Policy Guideline 1 provides that if a tenant has an uncaged animal in the rental unit the tenant is generally held responsible to pay for carpet cleaning, even if the tenancy is less than one year. Accordingly, I award the landlord carpet cleaning costs in the amount of \$140.00, as claimed.

I also accept the unopposed evidence that the rental unit required additional cleaning and I grant the landlord's request to recover \$50.00 for two hours of cleaning as I find this claim reasonable.

As the landlord was successful in this Application, I further award the landlord recovery of the \$100.00 filing fee.

I authorize the landlord to retain the tenant's security deposit and pet damage deposit in partial satisfaction of the amounts awarded to the landlord with this decision.

In light of the above, I provide the landlord with a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid and/or loss of rent: April – June 2016	\$2,175.00
Carpet cleaning	140.00
Cleaning	50.00
Filing fee	100.00
Less: security deposit and pet damage deposit	<u>(725.00)</u>
Monetary Order	\$1,740.00

Conclusion

The landlord has been authorized to retain the security deposit and pet damage deposit and has been provided a Monetary Order for the balance of \$1,740.00 to serve and enforce upon the tenant.

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: December 09, 2016

Residential Tenancy Branch