



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") filed on January 20, 2017 for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied: to keep the Tenant's security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and, to recover the filing fee from the Tenant.

An agent for the Landlord (the "Landlord") appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance by the Tenant during the eight minute hearing or any submission of written evidence prior to the hearing. As a result, I turned my mind to the service of the documents by the Landlord.

The Landlord testified that she served the Tenant with a copy of the Application and the Hearing Package by registered mail on January 26, 2017. The Landlord provided a copy of the Canada Post tracking number as evidence for this method of service. The Landlord testified that the Canada Post website indicated that the Tenant had received and signed for the documents on January 31, 2017. Based on the undisputed evidence of the Landlord, I find the Tenant was served with the required documents for this hearing pursuant to Section 89(1) (c) of the Act

The Landlord testified that since making the Application, the Tenant had vacated the rental unit on or before January 31, 2017. Therefore, I dismissed the Landlord's request for an Order of Possession as this was no longer required.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid/lost rent and a late rent fee?

- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim for unpaid/lost rent?

Background and Evidence

The Landlord testified that this tenancy started on May 1, 2014 for a fixed term of one year which then continued on a month to month basis. The parties signed a tenancy agreement and rent was payable by the Tenant in the amount of \$1,400.00 on the first day of each month. The rent amount was increased to \$1,440.00 effective August 1, 2016. The Tenant paid a \$700.00 security deposit on April 4, 2014 which the Landlord still retains.

The Landlord testified that the Tenant failed to pay rent due on January 1, 2017. As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") on January 6, 2017. The 10 Day Notice was provided into evidence and shows a vacancy date of January 16, 2017.

The Landlord testified that the Tenant paid \$903.58 on January 20, 2017 and paid another \$903.58 for the remainder of January 2017 rent. The Landlord testified that as the Tenant vacated the rental unit at the end of January 2017, the Landlord now claims for lost rent for February and March 2017 as they have been unable to re-rent the rental unit at the time of this hearing.

As a result, the Landlord clarified that the amount she was seeking to claim from the Tenant at this time was \$1,072.84 plus a \$25.00 late fee for January 2017 rent. The Landlord provided a tenancy agreement which shows a section titled 'Arrears'. This clause requires the Tenant to pay a fee of \$25.00 for late payment of rent.

Analysis

I have carefully examined the Landlord's oral and documentary evidence and I am satisfied that the Tenant did eventually pay the full rent, plus an extra amount, for January 2017 rent. However, I find the rent for January 2017 was paid late. Section 7(d) of the *Residential Tenancy Regulation* allows a Landlord to charge a fee of no more than \$25.00 for late payment of rent which is documented in a tenancy agreement.

Therefore, in accordance with the signed tenancy agreement between the parties, I find that there is sufficient evidence to prove the Landlord is entitled to the late rent fee claimed of \$25.00.

I accept the Landlord's testimony that the Tenant vacated the rental unit at the end of January 2017, thereby leaving insufficient time for the Landlord to mitigate loss by re-renting the rental unit for February 2017. I also accept that at the time of this hearing the Landlord has been unable to re-rent the rental unit. Accordingly, I award the Landlord the balance owing for February 2017 rent in the amount of \$1,072.84.

The Landlord had also claimed for lost rent for March 2017. However, I deny this request as there is still time left for the Landlord to make efforts to re-rent the unit for this month. If the Landlord is not able to do so, the Landlord may re-apply for this portion of the monetary claim with evidence of mitigation.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the \$100.00 Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is \$1,197.84 (\$25.00 + \$1,072.84 + \$100.00).

As the Landlord already holds the Tenant's \$700.00 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is issued a Monetary Order for the outstanding balance of \$497.84.

This order must be served on the Tenant and may then be enforced in the Small Claims Division of the Provincial Court as an order of that court if the Tenant fails to make payment. Copies of this order for service and enforcement are attached to the Landlord's copy of this Decision.

Conclusion

The Tenant has failed to pay rent. The Landlord is allowed to keep the Tenant's security deposit and is granted a Monetary Order the outstanding amount of **\$497.84**. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 21, 2017

Residential Tenancy Branch

