



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNDC, MNSD

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation - Section 67; and
4. An Order to retain the security deposit - Section 38.

The Tenants did not attend the hearing. I accept the Landlord's evidence that each Tenant was served with the application for dispute resolution, notice of hearing and evidence package (the “Materials”) by registered mail in accordance with Section 89 of the Act. The Landlord provided the tracking numbers for each registered mail. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenants are deemed to have received the Materials. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to other compensation?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on September 1, 2016. Rent of \$1,200.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$600.00 as a security deposit. Although required, the Tenants did not pay the pet deposit. On January 21, 2017 the Landlord served the Tenants with a one month notice to end tenancy for cause (the "Notice") by registered mail. The effective date of the Notice is February 28, 2017. The Tenants did not dispute the Notice. The Tenants have not moved out of the unit although it appears that they are now in the process of doing so. The Tenants owed rental arrears of \$300.00 from February 2017 and did not pay rent for March 2017. The Landlord subsequently received \$450.00 in a rent payment.

The Landlord claims unpaid rent and rent for April 2017 if required. The Landlord claims the unpaid pet deposit. The Landlord claims costs for alternate accommodation and cleaning costs. No invoices for the accommodation costs were provided.

Analysis

Section 47 of the Act requires that upon receipt of a one month notice to end tenancy for cause the tenant has 10 days to dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the undisputed evidence of the Landlord I find that the Landlord gave the Tenants the Notice, the Tenants did not dispute the Notice and the Tenants have not moved out of the unit. As a result I find that the Landlord is entitled to an order of possession.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Rent is payable until a tenancy ends. Based on the Landlord's evidence, I find that the Tenant has failed to pay rent as required under the tenancy agreement and that the Landlord is entitled to unpaid rent of **\$1,050.00** to the end of March 2017. As the tenancy will end or has ended I dismiss the Landlord's claim for April 2017 rent with leave to reapply should the Tenant ever hold the unit.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. As the tenancy has not ended and the Tenants still have time to leave the unit as required, I find that the Landlord has prematurely made a claim for damage to the unit and I dismiss this claim with leave to reapply.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. Although the Tenants failed to vacate the unit by the effective date of the Notice, given the lack of any receipts for costs of alternate accommodation I find that the Landlord has not provided sufficient evidence of the costs claimed and I dismiss this claim.

Section 20 of the Act provides that a landlord must not require a pet damage deposit at any time other than when the landlord and tenant enter into the tenancy agreement. As the Landlord did not enforce the collection of the pet deposit during the tenancy and as the tenancy is ending I find that the Landlord may not now obtain a pet deposit. I therefore dismiss this claim.

As the application has been primarily successful I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,150.00**. Deducting the security deposit of **\$600.00** plus zero interest leaves **\$450.00** owed by the Tenant to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order that the Landlord retain the **deposit** and interest of \$600.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$450.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order 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: March 30, 2017

Residential Tenancy Branch