



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PCPM Itf PACIFIC COVE ISLAND PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

Three agents for the landlord (the "agents") and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenant confirmed that she had received the documentary evidence from the landlord and had the opportunity to review that evidence prior to the hearing. The tenant confirmed that she did not submit any documentary evidence in response to the landlord's application.

Preliminary and Procedural Matters

Throughout the hearing, the tenant was cautioned to stop interrupting the agents and the undersigned arbitrator. Although the tenant was advised on multiple occasions that she would be given the opportunity to respond to the agents' testimony the tenant stated at 22 minutes into the hearing that she was "hanging up" and "will start this over again". The agents were advised once the tenant disconnected on purpose from the hearing that the application before me was a landlord application and would be proceeding without the tenant present as the tenant purposely decided to disconnect from the teleconference hearing. In addition, I find the matter to be unopposed by the tenant as the tenant made the decision to purposely disconnect from the hearing without presenting her evidence.

During the hearing, the agents explained in details that the actual amount owing in unpaid rent and loss of rent by the tenant was \$2,900.00 instead of the amount claimed of \$3,650.00. I find that a reduction in the amount of the landlord's monetary claim does not prejudice the tenant and is permitted pursuant to section 64(3) of the *Act*.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?

Background and Evidence

There is no dispute that a tenancy agreement exists between the parties. There is also no dispute that monthly rent is \$750.00 per month and due on the first day of each month. The agents confirmed that the tenant paid a security deposit of \$375.00 and a pet damage deposit of \$375.00 at the start of the tenancy which the landlord continues to hold.

The tenant confirmed receiving a 10 Day Notice for Unpaid Rent or Utilities dated March 2, 2017 (the "10 Day Notice") on March 2, 2017. The amount listed as owing on the 10 Day Notice is \$2,906.00 as of March 1, 2017. The 10 Day Notice included an effective vacancy date of March 12, 2017. The tenant testified that she did not dispute the 10 Day Notice. The tenant failed to provide any evidence that the amount indicated as owing was paid within 5 days of receiving the 10 Day Notice. The agents testified that as of April 2017, the tenant owes a total of unpaid rent and loss of rent in the amount of \$2,900.00 after all payments have been applied from the tenant towards rental arrears. The amount of \$2,900.00 includes loss of rent for April 2017 as the tenant continues to occupy the rental unit without paying for use and occupancy. The landlord is seeking an order of possession as soon as possible.

The landlord submitted a copy of several 10 Day Notices, proof of service documents, pages two through six of the tenancy agreement, the tenant's account ledger, and a timeline document in evidence.

Analysis

Based on the landlord's documentary evidence and testimony provided by the agents during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenant failed to pay the rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The effective vacancy date of the Notice is listed as March 12, 2017. I find the tenant was conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which was March 12, 2017. The tenant continues to occupy the rental unit. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I find the tenancy ended on March 12, 2017 and that the tenant has been over-holding the rental unit since that date.

Claim for unpaid rent and loss of rent – As the tenant was deemed served and purposely disconnected from the hearing, I find the Application of the landlord to be unopposed by the tenant. The agents testified that \$2,900.00 in rent arrears and loss of rent is owed by the tenant as of the date of the hearing. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$2,900.00** as claimed.

As the landlord has succeeded with their application, I grant the landlord the recovery of the filing fee in the amount of **\$100.00**.

The landlord is holding a security deposit of \$375.00 and a pet damage deposit of \$375.00 which was paid by the tenant at the start of the tenancy and has accrued no interest since the start of the tenancy. During the hearing, the agents requested to retain the tenant's security deposit and pet damage deposit if they were so entitled to under the *Act*.

Monetary Order – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit plus \$0.00 interest as follows:

ITEM DESCRIPTION	AMOUNT
1. Unpaid rent arrears and loss of rent	\$2,900.00
2. Filing fee	\$100.00
Subtotal of landlord's monetary claim	\$3,000.00
<i>(Less tenant's security deposit of \$375.00 and pet damage deposit</i>	<i>-\$750.00)</i>

of \$375.00 including \$0.00 interest)	
TOTAL BALANCE OWING BY TENANT TO LANDLORD	\$2,250.00

Based on the above, I **authorize** the landlord to retain the tenant's full \$375.00 security deposit and \$375.00 pet damage deposit in partial satisfaction of the landlord's monetary claim. Pursuant to section 67 of the *Act* I grant the landlord a monetary order for the balance owing by the tenant to the landlord in the amount of **\$2,250.00**.

Conclusion

The landlord's application is fully successful. The tenancy ended on March 12, 2017.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$3,000.00 as indicated above. The landlord is authorized to retain the tenant's full security deposit of \$375.00 and full pet damage deposit of \$375.00 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of \$2,250.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 12, 2017

Residential Tenancy Branch