



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords – OPB, MNR, MNSD, FF

For the tenant – MNR, MNDC, MNSD, OLC, SS, LRE, LAT, FF, O

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlords applied for Order of Possession because the tenant reached an agreement with the landlords; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order for the cost of emergency repairs; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for a Monetary Order to recover the security deposit; for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; for an Order for Substitute Service; for an Order to change the locks to the rental unit; for an Order to suspend or set conditions on the landlords' right to enter the rental unit, other issues; and to recover the filing fee from the landlords for the cost of this application.

The parties attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence, which both parties declined. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. The landlord testified that they were not served with an application for Dispute Resolution from the tenant. The tenant testified that he thinks his girlfriend sent the hearing documents to the landlord by mail.

Procedural Matter

As I have insufficient evidence before me concerning service of the tenant's hearing documents upon the landlords I am unable to proceed today with the tenant's application. The landlords have a right to know what the tenant has applied for and in this case the tenant is unable to demonstrate to my satisfaction that each landlord was served with the hearing package and any evidence in accordance with the Rules of Procedure 3.1. The tenant had applied for a Substitute Service Order but agreed he did know the landlords' address and therefore an Order of this nature was not required. Consequently, the tenant's application is dismissed. Some of the application is dismissed with leave to reapply as documented in the final conclusions of this decision. The hearing continued today to deal with the landlords' application only.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Has the tenant breached an agreement with the landlord and if so are the landlords entitled to an Order of Possession?

Are the landlords entitled to a Monetary Order for unpaid rent?

Are the landlords permitted to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this tenancy started on April 01, 2016 for a fixed term tenancy that must end on March 30, 2017. Both parties agreed to this end date as documented in the tenancy agreement. Rent for this unit is \$1,900.00 per month due on the first day of each month. The tenant paid a security deposit of \$950.00 on April 01, 2016.

The landlord's agent AG testified that this tenancy ended on March 30, 2017. The tenant did not vacate the rental unit on March 30, 2017 as agreed when the tenant

signed the tenancy agreement. The tenant has overheld in the rental unit and the landlords seek an Order of Possession effective as soon as possible.

AG testified that the tenant had provided postdated cheques up to March, 2017. The tenant has not paid any further rent for the period of April and May while he has overheld at the rental unit. The landlords seek to recover rent for April of \$1,900.00 and request permission to amend their application to recover unpaid rent for May, 2017.

AG testified that the landlord was fined \$50.00 from the Strata because of loud noise from the tenant's unit. AG referred to the letter from the Strata in documentary evidence detailing the noise complaint and the fine. AG testified that the letter details that a further \$75.00 fine will be imposed upon the landlord for any other noise infractions. The landlord therefore seeks to recover \$75.00 in Strata fines.

AG testified that the tenant got a pet without permission from the landlords and failed to pay a pet damage deposit. The landlords therefore seek to recover this pet damage deposit of \$950.00.

AG testified that the landlords seek permission to keep the security deposit of \$950.00 to offset against the unpaid rent. The landlords request a Monetary Order for the balance of April and May's rent, the Strata fine and to recover the filing fee of \$100.00.

The tenant disputed the landlords' claim. The tenant testified that he did not have time to find a new place and thought the tenancy continued on a month to month basis.

The tenant testified that he offered to pay rent for April by cheque to the landlord when they came banging on his door and entered his unit. The landlord would not accept the cheque and instead offered the tenant money to move out. The tenant testified that he did not post the rent cheque to the landlords or provide the rent in any other manner and did not pay any rent for May, 2017.

The tenant did not dispute any other aspects of the landlords' claim.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

I refer the parties to s. 55(2)(c) of the *Act* which states:

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term.

I have reviewed the tenancy agreement and find that this is a fixed term agreement that does provide that the tenancy will end on March 30, 2017 and that the tenant must vacate the rental unit on that date. Consequently, I find in favor of the landlords' application for an Order of Possession pursuant to s. 55(2)(c) of the *Act*.

With regard to the landlords' application for a Monetary Order to recover unpaid rent. I refer the parties to s. 26 of the *Act* which states:

26. 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 a right under this Act to deduct all or a portion of the rent.

There is insufficient evidence to show that the tenant has a right to withhold or deduct any rent for April and the tenant agreed the rent had not been paid. I therefore find in favor of the landlords' claim to recover **\$1,900.00** for rent for April after the tenant continued to reside in the rental unit after the tenancy had ended.

The landlords requested an amendment to their application to include the recovery of rent for May, 2017. I have allowed this amendment as the tenant continued to reside in the rental unit and should have provided rent to the landlord for use and occupancy; however, as the tenancy will end part way through the month of May and it is possible the landlords may be able to re-rent the unit for the remainder of May, I have limited the landlords amended application to include rent up to May 15, 2017. If the landlords are unable to re-rent the unit in a timely manner the landlords are at liberty to file a new application to recover the remainder of rent for May, 2017. I therefore award the landlords the amount of **\$950.00**.

With regard to the landlords' application to recover a pet damage deposit; as this tenancy will end then I have not considered this section of the landlords' application. A pet damage deposit is an amount paid by a tenant and held in trust by a landlord until the end of the tenancy and then must be dealt with under s. 38 of the Act. The landlord may not request this amount at the end of the tenancy if it was not paid when the tenant got a pet. This section of the landlords' application is therefore dismissed.

With regard to the landlords' request to recover \$75.00 for Strata fines, I am satisfied that the landlords were fined **\$50.00** by the Strata and therefore award this amount to the landlords. There is insufficient evidence from the landlords to show that a further fine was made against them due to noise violations made by the tenant.

I Order the landlords to retain the security deposit of **\$950.00** pursuant to s. 38(4)(b) of the Act. This amount will be offset against the landlords' monetary claim.

As the landlords' application has merit I find the landlords are entitled to recover the filing fee of **\$100.00** from the tenant pursuant to s. 72(1) of the Act. A Monetary Order has been issued to the landlords pursuant to s. 67 and 72(1) of the Act for the following amount:

Unpaid rent for April, 2017	\$1,900.00
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Unpaid rent for May, 2017	\$950.00
Strata fine	\$50.00
Filing fee	\$100.00
Less security deposit	(-\$950.00)
Total amount due to the landlord	\$2,050.00

Conclusion

The landlord has been issued an Order of Possession effective **two (2) days** after service upon the tenant pursuant to section 55(2)(c) of the *Act*. This Order must be served on the tenant. If the tenant remains in Possession of the rental unit and does not relinquish that possession to the landlord then the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,050.00**. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

The tenant's application for a Monetary Order for the cost of emergency repairs and for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement are dismissed with leave to reapply.

The reminder of the tenant's application is dismissed without leave to reapply as there will no longer be a tenancy between the parties.

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: May 09, 2017

Residential Tenancy Branch