



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* ("the Act") for: an Order of Possession for Unpaid Rent pursuant to section 55; a monetary order for unpaid rent pursuant to section 67; allowance to recover the filing fee from the tenants for the cost of this application pursuant to section 72.

Both parties attended this hearing and were given full opportunity to be heard, to present evidence and to make submissions. Tenant SS confirmed receipt of the landlord's Application for Dispute Resolution hearing package and further evidence packages. The tenants testified that they had vacated the residence and therefore the landlord withdrew her application for an Order of Possession.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began on December 5, 2015 as a term tenancy. As of December 2016, the tenancy reverted to a month to month tenancy. The rental amount for this unit was \$1200.00 payable on the first of each month. The landlord testified that she continued to hold the \$600.00 security deposit paid by the tenants at the start of this tenancy. The tenants testified that they also paid a \$300.00 pet damage deposit. That pet damage deposit is included as also paid by the tenants at the start of the tenancy. The landlord testified that the tenants did not pay the full pet damage deposit amount. She did not supply evidence to contradict the testimony of the tenants with respect to the \$300.00 pet damage deposit.

The landlord originally applied for an Order of Possession for unpaid rent for the month of April 2017. The landlord testified that the tenants did not pay rent of \$1200.00 due on

April 1, 2017. The landlord testified that the tenants paid rent late on several occasions and, in March 2017, the tenants did not pay the full rental amount until the middle of the month of March.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenants did not pay the April 2017 rent after receiving the 10 Day Notice on April 4, 2017. The tenant SS testified that she was told she had 30 days to move out when she had been served an eviction notice and that, as she was being evicted, she did not have to pay rent. The landlord has withdrawn her application for an Order of Possession as the tenants vacated the rental unit on April 30, 2017.

The landlord applied for a monetary award of \$1300.00 for the April 1, 2017 unpaid rent as well as the recovery of her \$100.00 filing fee.

Analysis

Section 26(1) of the *Residential Tenancy Act* establishes that “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.”

The tenants failed to pay April 2017 rent in accordance with the residential tenancy agreement and section 26 of the Act. In this case, the tenants vacated the rental unit on April 30, 2017, after the effective date of the 10 Day Notice to End Tenancy issued by the landlord for unpaid rent. The tenants did not dispute that they continued to reside in the rental unit for the entire month of April 2017. Therefore, based on the strict requirements of section 26, the landlord is entitled to April 2017 rent of \$1200.00.

I accept the evidence of both parties that the tenants resided in the rental unit for the month of April 2017 and they failed to pay the \$1200.00 rental amount for the month of April 2017. The landlord brought an application to the Residential Tenancy Branch to recover the tenant’s unpaid rent. Therefore, the landlord is also entitled to recover the \$100.00 filing fee for this application from the tenant.

The landlord testified that she continues to hold a \$600.00 security deposit. The landlord is entitled to retain this security deposit towards the rental arrears owed to her plus any interest from December 5, 2015 to the date of this decision for this tenancy. There is no interest payable for this period. I accept the tenants’ testimony that they also paid a \$300.00 pet damage deposit.

That pet damage deposit is included on the written residential tenancy agreement. The landlord testified that the tenants did not pay the full pet damage deposit amount however she was unable to provide any evidence to contradict the testimony. Therefore, I accept the testimony of the tenants, supported by the documentary evidence (the tenancy agreement) with respect to the pet damage deposit. Based on my finding that the tenants paid a \$300.00 pet damage deposit at the outset of the tenancy, I find that the landlord is also entitled to retain the \$300.00 deposit towards her monetary award.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary Order in favour of the landlord as follows:

Rental Arrears for April 2017	\$1200.00
Less Security Deposit	-600.00
Less Pet Damage Deposit	-300.00
Recovery of Filing Fee for this application	100.00
Total Monetary Award	\$400.00

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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 26, 2017

Residential Tenancy Branch