



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent or utilities; an Order of Possession for cause; for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on April 27, 2017. Canada Post tracking numbers were not provided by the landlord. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

At the outset of the hearing the landlord advised that there had been a previous hearing based on an application by the tenant to cancel a Notice to End Tenancy for unpaid rent. At that hearing the tenant failed to attend and the landlord was awarded an Order of Possession. The tenant vacated the rental unit sometime in May, 2017 and therefore, the landlord withdraws the application for an Order of Possession for unpaid rent and for cause.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord permitted to keep all or part of the security or pet deposit?

Background and Evidence

The landlord testified that this tenancy started on February 16, 2016 for a fixed term tenancy which ended on March 31, 2017. The tenancy agreement states that the tenant must vacate the rental unit at the end of the fixed term. The tenant failed to vacate and continued to reside in the unit to an unknown date in May, 2017. Rent for this unit was \$2,350.00 per month due on the 1st of each month. The tenant paid a security deposit of \$1,175.00 and a pet deposit of \$1,175.00 on February 16, 2015.

The landlord testified that the tenant failed to pay rent for April, 2017 of \$2,350.00. The tenant was served with a 10 Day Notice to End Tenancy on April 04, 2017 in person. The tenant did not pay the outstanding rent and although the tenant did file an application to dispute the Notice, the tenant failed to attend the hearing on May 09, 2017. The landlord seeks to recover the unpaid rent for April of \$2,350.00

The landlord testified that she obtained an Order of Possession at that hearing which was effective two days after it was served upon the tenant. The Order was served on May 10, 2017 by posting it to the tenant's door. The tenant moved out of the unit without informing the landlord of the day she was vacating. The landlord testified that as she was not informed which day the tenant was vacating the unit, the landlord was unable to re-rent the unit throughout the month of May, 2017. The landlord seeks to amend her application to include in paid rent for May, 2017 of \$2,350.00.

The landlord testified that the tenant's boyfriend parked his truck permanently in the visitor's parking bay. This truck leaked oil and the Strata Management took photographs of the truck and

oil stains. Warning letters were sent concerning these issues and the landlord was fined \$50.00 by Strata Management. The landlord had to clean up the oil stains using a product purchased for this purpose. The landlord has provided a copy of the warning letters and documentation concerning the fines imposed from Strata Management and seeks to recover the \$50.00 fine from the tenant. The landlord seeks to recover the cost for the oil remover of \$30.11 and has provided a copy of the receipt in documentary evidence.

The landlord testified that Strata Management also wrote and informed the landlord that they are imposing a further fine of \$525.00 but to date this was not been applied to the landlord's account.

The landlord seeks an Order to be permitted to keep the security and pet deposit in partial satisfaction of her monetary claim. The landlord also seeks to recover the filing fee of \$100.00 from the tenant.

Analysis

The tenant did not appear at the hearing to dispute the landlord's application, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's undisputed evidence before me.

With regard to the landlord's claim for 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.

I am satisfied that the tenant continued to reside in the rental unit after the fixed term tenancy ended and that the tenant failed to pay rent for April or May, 2017. While the landlord has no knowledge of which day the tenant vacated the rental unit in May the tenant did not inform the landlord that she had vacated and the landlord was unable to re-rent the unit for the remainder

of May. Consequently, I will allow the landlord to amend her application to include unpaid rent for May, 2017.

The landlord will receive a monetary award for the unpaid rent for April and May to an amount of \$4,700.00.

With regard to the landlord's claims to recover a fine imposed upon the landlord by the Strata Management for oil stains on the visitor's parking lot and for the fines due to this truck being parked permanently in the visitor's parking bay. I am satisfied from the undisputed evidence before me and on a balance of probabilities that the tenant's boyfriend's truck was parked in this visitor's parking bay for an extended period and from the photographic evidence it appears that this truck did leak oil onto the bay.

A tenant is responsible for the actions of their guests in the building and this includes the parking lot. Under s. 32 of the *Act*, the tenant should have remedied these oil stains prior to vacating the rental unit and as the tenant failed to do so, I find in favor of the landlord's monetary claim to recover the cost for the oil remover of \$30.11 and for the Strata fine of \$50.00.

The landlord had also made a claim for a further Strata fine of \$525.00; however as the landlord has not incurred this cost then this section of the landlord's claim is dismissed.

I Order the landlord to keep the tenant's security and pet deposit of \$2,350.00 pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the landlord's monetary award.

As the landlord's application has merit I find the landlord is entitled to recover the filing fee of \$100.00 pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord pursuant to s. 67 and 72(1) of the *Act* as follows:

Unpaid rent for April and May	\$4,700.00
Oil stain remover	\$30.11
Strata fine	\$50.00
Filing fee	\$100.00
Less security and pet deposit	(-\$2,350.00)

Total amount due to the landlord	\$2,530.11
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Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,530.11**. 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.

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: June 01, 2017

Residential Tenancy Branch