



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING ADVISORY ASSOCIATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application 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;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 9:48 a.m. in order to enable them to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord's representative SH (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord withdrew the application for an Order of Possession for unpaid rent because the tenants vacated the rental unit on approximately August 24, 2017. The landlord also said that they were initially mistaken as to the tenants' payment of a security deposit, so she also withdrew that element of the landlord's application.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted on the tenants' door on June 8, 2017 at 11:28 a.m. I find that this Notice was deemed served to the tenants on June 11, 2017, three days after its posting, and in accordance with sections 88 and 90 of the *Act*.

The landlord entered written evidence and sworn testimony that she sent both tenants copies of the dispute resolution hearing package by registered mail on August 2, 2017. She provided copies of the Canada Post Tracking Numbers to confirm this registered mailing and advised that Canada Post's Online Tracking system revealed that these

packages were successfully delivered on August 4, 2017. I find that the tenants were deemed served with these documents on August 7, 2017, in accordance with section 89 of the *Act*.

The landlord also submitted an amended application, in which the landlord attempted to increase the amount of the monetary award requested from the \$1,725.00 identified in the original application, or \$2,525.00 as noted on the Monetary Order Worksheet attached to that application to \$6,495.29. She testified that she sent this amended application to the tenants by registered mail to an address the tenants provided to the landlord on October 2, 2017. This application added a significant claim for damage to the landlord's previous claim for a monetary award for unpaid rent. In accordance with sections 88, 89 and 90 of the *Act*, the amended application and the written evidence supporting the damage claim were deemed served to the tenants on October 7, 2017, the fifth day after their registered mailing.

The Residential Tenancy Branch's Rules of Procedure require that all evidence and certainly an amendment to an application be provided to the respondents at least 14 days in advance of a hearing. As this did not occur in this case and I am not satisfied that the tenants would have been aware to the extent required that the landlord's original application for a monetary award for unpaid rent had been modified to include a significant damage claim, I dismiss the landlord's amended application for dispute resolution with leave to reapply for the damage claimed in that amended application.

As mentioned at the hearing, the only issues properly before me at this hearing were the landlord's claim for unpaid rent owing for June, July and August 2017, plus an NSF cheque fee of \$25 for June rent, and the recovery of the landlord's filing fee for this application. The total amount claimed and as identified in the landlord's Monetary Order Worksheet was \$2,525.00.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began on or about February 8, 2015. Monthly rent was set at \$800.00, payable in advance on the first of each month. Although the landlord initially believed that a security deposit had been paid by the tenants, they later discovered that no deposits have been paid by the tenants to the previous landlord or were currently retained by the landlords for this tenancy.

The landlord's 10 Day Notice of June 8, 2017, identified \$800.00 in unpaid rent owing as of that date. Although the tenants did send the landlord a cheque in that amount shortly after receiving the 10 Day Notice, that cheque was returned to the landlord as there were insufficient funds in the tenants' account. As per the terms of their tenancy agreement, a copy of which was entered into written evidence by the landlords, the landlords claimed \$25.00 for the NSF cheque fee from the tenants. The landlord's monetary claim also requested payments for unpaid rent owing from July and August 2017, \$800.00 for each month.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 26(1) of the *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."

Based on the undisputed written evidence and sworn testimony of the landlord, I find that the landlord is entitled to a monetary award in the amount of \$800.00 for June, July and August 2017, plus a \$25.00 fee for the NSF cheque issued by the tenants in June 2017. As the landlord has been successful in this application, the landlord is entitled to recover the \$100.00 filing fee for this application from the tenants.

Conclusion

I issue a monetary Order under the following terms, which allows the landlord to recover unpaid rent, the NSF cheque fee, and the filing fee:

Item	Amount
Unpaid June 2017 Rent	\$800.00

NSF Cheque Fee	25.00
Unpaid July 2017 Rent	800.00
Unpaid August 2017 Rent	800.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$2,525.00

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's applications for an Order of Possession and authorization to retain the security deposit are withdrawn.

The landlord remains at liberty to apply for damage arising out of this tenancy, as the amended application was not served to the tenants in accordance with the Residential Tenancy Branch's Rules of Procedure.

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: October 20, 2017

Residential Tenancy Branch