



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COAST PACIFIC PROPERTY SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid; and, authorization to retain the security deposit. The landlord's agent appeared at the hearing; however, there was no appearance on part of the tenant despite leaving the teleconference call open for over 40 minutes. Since the tenant did not appear, I explored service of hearing documents upon the tenant. The landlord testified that the hearing documents were sent to the tenant via registered mail on April 5, 2018 and successfully delivered on April 9, 2018. The landlord provided a registered mail receipt, including tracking number, as proof of service. A search of the tracking number confirmed the landlord's testimony. Having been satisfied the tenant was duly served with notification of this proceeding, I continued to hear from the landlord without the tenant present.

The landlord requested that the monetary claim be amended to include loss of rent for the months of April 2018 and May 2018 since the tenant continues to occupy the rental unit. I find this request would be reasonably foreseeable by the tenant and I permitted the amendment.

The landlord pointed out that the Application for Dispute Resolution erroneously indicated the tenant paid a pet damage deposit. The landlord testified that there is no record of the tenant actually paying a pet damage deposit even though she has a pet and the landlord requested that this correction be noted and taken into account in calculating the Monetary Order. The correction is noted and a pet damage deposit has not been considered in calculating the Monetary Order.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to recovery of unpaid and loss of rent as claimed?
3. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The tenancy started on November 1, 2006 on a month to month basis. The tenant paid a security deposit of \$247.50 on October 16, 2006 and the monthly rent was set at \$495.00 payable on the first day of every month. The landlord testified that the rent has increased over the years to the most recent amount of \$694.00 per month.

The landlord testified that the tenant failed to pay rent for December 2017 when due and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The tenant paid the outstanding rent for December 2017 in January 2018 which the landlord accepted and was willing to continue the tenancy at that time.

The tenant failed to pay rent for January 2018, February 2018 and March 2018 and the landlord sent a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") to the tenant via registered mail on March 3, 2018. The landlord provided the registered mail receipt and print out from Canada Post to prove delivery of the 10 Day Notice to the tenant on March 6, 2018. The landlord testified that the tenant did not pay the outstanding rent or file to dispute the 10 Day Notice. The landlord testified that the tenant continues to occupy the rental unit and has not paid any monies for the months of April 2018 or May 2018.

The landlord seeks an Order of Possession as soon as possible. The landlord seeks to recover unpaid and loss of rent for the months of January 2018 through May 2018 and authorization to retain the tenant's security deposit, plus interest, in partial satisfaction of the unpaid rent.

As evidence for this proceeding, the landlord provided a copy of the tenancy agreement, a letter appointing the named landlord as the owner's agent, registered mail receipts, Proof of Service of the 10 Day Notice; and, the 10 Day Notice.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. I was not presented any information to suggest the tenant had a legal right to withhold rent.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

I accept the evidence before me that the tenant was required to pay rent of \$694.00 on the first day of every month and the tenant has failed to do so for the month of January 2018 onwards. I also accept that the landlord sent a 10 Day Notice to the tenant via registered mail on March 3, 2018 and it was received by the tenant on March 6, 2018. Accordingly, I find the tenant had until March 11, 2018 to either pay the outstanding rent or file to dispute the 10 Day Notice. Since she did neither, I find the tenancy ended 10 days after the 10 Day Notice was received, or March 16, 2018. I note that the stated effective date on the 10 Day Notice reads March 13, 2018; however, an incorrect effective date does not invalidate a Notice. Rather, the effective date automatically changes to comply with the Act, pursuant to section 53 of the Act. Therefore, I find the landlord is entitled to regain possession of the rental unit and I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

Based upon the unopposed evidence before me, I find the landlord entitled to recover unpaid rent for the months of January 2018 through March 2018 in the sum of \$2,082.00 (\$694.00 x 3). Since the tenant did not comply with the 10 Day Notice and has remained in possession of the rental unit, I further find the tenant has caused the landlord to suffer further loss of rent and I award the landlord loss of rent for April 2018 and May 2018 in the sum of \$1,388.00 (\$694.00 x 2).

I authorize the landlord to retain the tenant's security deposit and accrued interest, which I calculate to be \$255.26, in partial satisfaction of the rent owed to the landlord. I also award the landlord recovery of the \$100.00 filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid Rent: January – March 2018	\$2,082.00
Loss of Rent: April – May 2018	1,388.00
Filing fee	100.00
Less: security deposit and accrued interest	<u>(255.26)</u>
Monetary Order	\$3,314.74

Conclusion

The landlord is provided an Order of Possession effective two (2) days after service upon the tenant. The landlord is authorized to retain the tenant's security deposit and accrued interest and the landlord is provided a Monetary Order for the balance of \$3,314.74 to serve and enforce upon the tenant.

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, 2018

Residential Tenancy Branch