



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RED DOOR HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord's application: OPRM-DR FFL
Tenant's application: CNR FFT

Introduction

This hearing was convened as a result of the landlord's and tenant's applications for dispute resolution ("applications") under the *Residential Tenancy Act* ("Act"). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 22, 2018 ("10 Day Notice") and to recover the cost of the filing fee.

An agent for the landlord ("agent") attended the teleconference hearing. During the hearing the agent was given the opportunity to provide her evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenant did not attend this hearing, although I left the teleconference hearing connection open for a total of 22 minutes in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. Pacific Time on Wednesday, May 9, 2018. The landlord agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord agent and I were the only ones who had called into this teleconference. As a result, after the 10 minute waiting period, the tenant's application was **dismissed without leave to reapply** as the tenant failed to attend the hearing to present the merits of their application and the landlord agent did attend and was ready to proceed.

As the tenant did not attend the hearing, service of the landlord's Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail on March 22, 2018 and according to the online registered mail tracking website, the registered mail package was signed for and accepted on March 31, 2018. As a result, I find the tenant was served on March 31, 2018 which is the date the registered mail package was signed for and accepted. I also find that the landlord's application is undisputed as the tenant failed to attend the teleconference hearing.

Preliminary and Procedural Matters

The agent confirmed the landlord's email address at the outset of the hearing. The agent confirmed their understanding that the decision would be emailed to the agent and that any applicable orders would also be emailed and that the tenant's copy of the decision would be sent by regular mail.

The agent testified that if the landlord is entitled, they wish to offset the tenant's security deposit from money owing for unpaid rent/loss of rent.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on November 14, 2014. The tenant's rent is based on her income and is \$1,060.00 per month and is due on the first day of each month. The tenant paid a \$506.50 security deposit at the start of the tenancy, which the landlord continues to hold.

The landlord applied for dispute resolution on March 21, 2018, after the 10 Day Notice was served on the tenant. As the tenant did not attend this hearing the agent was advised that I consider the 10 Day Notice to be undisputed. The effective vacancy date listed on the 10 Day Notice was March 8, 2018. The 10 Day Notice indicates that \$1,060.00 was due February 1, 2018 and according to the agent, the tenant failed to

pay February 2018 rent until March 14, 2018 which is well after the 10 Day Notice was served.

The landlord is seeking \$1,085.00 comprised of unpaid May 2018 rent of \$1,060.00 and a Non-Sufficient Funds ("NSF") fee of \$25.00 charged by the bank to return the tenant's NSF cheque that could not be cashed.

Analysis

Based on the undisputed documentary evidence of the landlord and the undisputed testimony of the agent, and on the balance of probabilities, I find the following.

Order of Possession – Pursuant to section 55 of the *Act*, once I have dismissed the tenant's application or uphold the landlord's 10 Day Notice, I must grant an order of possession if the 10 Day Notice complies with section 52 of the *Act*. I have reviewed the 10 Day Notice and find that it complies with section 52 of the *Act*. Therefore, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice by not disputing the 10 Day Notice. As a result, I find the tenancy ended on March 8, 2018 which was the effective vacancy date listed on the 10 Day Notice. Therefore, as the tenant continues to occupy the rental unit, I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

Monetary claim of landlord – The landlord testified that the tenant has failed to pay any money for use and occupancy for May 2018 in the amount of \$1,060.00 and owes a \$25.00 NSF fee for a cheque returned by the bank that could not be cashed due to the tenant's insufficient funds. Pursuant to section 26 of the *Act*, tenants must pay rent when it is due in accordance with the tenancy agreement. Based on the above, **I find** the tenant breached section 26 of the *Act* by failing to pay rent as claimed by the landlord. Therefore, **I find** the landlord has met the burden of proof and is entitled to **\$1,060.00** in unpaid rent/loss of rent as claimed. I also grant the landlord **\$25.00** for the NSF fee due to the tenant writing a cheque that was returned by the bank as NSF.

As the landlord's application had merit, **I grant** the landlord the recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*.

I find that the landlord has established a total monetary claim of **\$1,185.00** comprised of \$1,060.00 in unpaid rent/loss of rent, plus the \$25.00 NSF fee, and the \$100.00 filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset

against the tenant's security deposit, which the landlord continues to hold, in the amount of \$506.50, which has accrued \$0.00 in interest to date.

I authorize the landlord to retain the tenant's full security deposit of \$506.50 in partial satisfaction of the landlord's monetary claim, and **I grant** the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of **\$678,50**.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord's application is fully successful.

The tenancy ended on March 8, 2018. The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

The landlord has established a total monetary claim of \$1,185.00 as indicated above. The landlord has been authorized to retain the tenant's full security deposit of \$506.50 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order under section 67 for the balance due by tenant to the landlord in the amount of \$678.50. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 9, 2018

Residential Tenancy Branch