



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPL, MNRL-S, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent and for landlord's use of property, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 61 minutes in order to allow both parties to fully present their submissions and to negotiate a settlement of a portion of this application.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenant's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application and the landlord was duly served with the tenant's written evidence package.

The tenant confirmed receipt of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated February 28, 2018 ("2 Month Notice"). In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice.

Settlement of End of Tenancy Issue

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of a portion of their dispute.

Both parties agreed to the following final and binding settlement of a portion of their application:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on June 30, 2018, by which time the tenant and any other occupants will have vacated the rental unit;
2. Both parties agreed that this tenancy is ending pursuant to the landlord's 2 Month Notice, dated February 28, 2018;
3. The landlord agreed that the tenant is entitled to one month's free rent compensation pursuant to section 51 of the *Act* and the landlord's 2 Month Notice on the following term:
 - a. The tenant is not required to pay any rent to the landlord from June 1 to 30, 2018, which has already been enforced by the parties;
4. The tenant agreed that the landlord is entitled to retain the tenant's security deposit of \$1,325.00 in partial satisfaction of the rent owed by the tenant to the landlord from April 1 to May 31, 2018.

These particulars comprise the full and final settlement of a portion of this dispute for both parties. Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final and binding and enforceable, which settles a portion of this dispute.

The parties were unable to settle the other issues in this application and asked that I make a decision about it. Below are my findings.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

Both parties agreed to the following facts. Monthly rent in the amount of \$2,650.00 is payable on the first day of each month, as per the parties' written tenancy agreement. There are other tenants listed on the tenancy agreement together with the tenant. The tenant continues to reside in the rental unit.

The tenant agreed that she failed to pay rent of \$2,650.00 to the landlord for each month from April to May 2018, totalling \$5,300.00. The tenant agreed above that the landlord could retain her security deposit of \$1,325.00 towards this amount of \$5,300.00.

The tenant stated that she did not have money to pay the landlord for rent because two of her roommates moved out and she was unable to collect the rent from them. She said that there is still another person living in the unit and he is also responsible for rent. The tenant stated that the landlord turned off her water and failed to reconnect it. She said that she overpaid for hydro costs because of this fact and it should be deducted from her rent.

Analysis

Section 26 of the *Act* requires a tenant to pay rent when it is due under a tenancy agreement. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I find that the tenant owes rent of \$2,650.00 per month as per the written tenancy agreement signed between the landlord and the tenant. I find that the tenant continued this tenancy after the former two tenants vacated. Therefore, she is jointly and severally responsible for the rent to the landlord, regardless of whether the other tenants signed the agreement. The tenant failed to pay the rent owed to the landlord from April to May 2018. She did not have an order from an Arbitrator to deduct any money from rent and she did not provide proof of paying for emergency repairs under section 33 of the *Act*, which allowed her to deduct money from rent.

Pursuant to section 67 of the *Act*, I award the landlord \$3,975.00 total in unpaid rent from April 1 to May 31, 2018, taking into account the \$1,325.00 security deposit that was offset against the total of \$5,300.00.

As the landlord settled part of this application and I was not required to decide the entire claim on its merits after a full hearing, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application, from the tenant.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on June 30, 2018. The landlord is provided with this Order in the above terms and the tenant must be served with this Order in the event that the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on June 30, 2018. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour in the amount of \$3,975.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I order the landlord to retain the tenant's entire security deposit of \$1,325.00.

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 21, 2018

Residential Tenancy Branch