



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDCL-S MNRL-S OPR

Introduction

This decision pertains to the Landlord's application for dispute resolution made on May 22, 2018, under the *Residential Tenancy Act* (the "Act"). The Landlord seeks an order of possession of the rental unit, and, a monetary order for unpaid rent, for late fees, and for the filing fee.

The Landlord's agent (the "Landlord") attended the hearing before me and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The Tenant did not attend.

The Landlord testified that they served the Tenant with the Notice of Dispute Resolution Proceeding package (the "NDR") by Canada Post registered mail on May 30, 2018. A registered mail tracking number was included in the Landlord's documentary evidence. I find that the Landlord served the Tenant with the NDR pursuant to subsection 89(2)(b) of the Act.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Issues

1. Is the Landlord entitled to an order of possession of the rental unit?
2. Is the Landlord entitled to a monetary order for compensation for unpaid rent, for late fees, and for the filing fee?

3. Is the Landlord entitled to retain the security deposit held, pursuant to section 72 of the Act?

Background and Evidence

The Landlord presented and submitted into evidence a copy of a Residential Tenancy Agreement (the “Agreement”), the details of which I confirmed with her. The tenancy began February 1, 2018, monthly rent was \$750.00 due on the first of the month, and the Tenant has paid a \$375.00 security deposit.

The Landlord testified that Tenant has not paid rent for May, June, and July 2018. The Landlord served a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) on the Tenant’s door on May 7, 2018, which is deemed to be received on May 10, 2018. I note that the effective date of end of tenancy on the Notice was May 15, 2018, which is corrected to May 20, 2018, pursuant to section 53(1) of the Act.

The Landlord claims \$2,250.00 in compensation for unpaid rent.

The Agreement—signed by the Tenant—states that “Late payments, returned and non-sufficient fund cheques (N.S.F.) are subject to a maximum service charge of \$25.00 each” and the Landlord claims compensation in the amount of \$115.00, for late fees for April, May, June, and July 2018, and for a partial late fee balance for March 2018.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Monetary Order for Unpaid Rent, Late Fees, and Filing Fee

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the Notice informed the Tenant that the Notice would be cancelled if they paid rent within five days of service. The Notice also explains that the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Landlord provide oral and documentary evidence to support their submission that the Tenant did not pay rent when it was due for May, June, and July 2018. Further, there is insufficient evidence before me that the Tenant had a right under the Act to deduct some or all of the rent, or that they applied to cancel the Notice.

Taking into consideration all of the documentary evidence and unchallenged testimony presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has met the onus of proving their claim for \$2,250.00 in compensation for unpaid rent, and for \$115.00 in compensation for late fees, pursuant to section 67 of the Act.

As the Landlord is successful in their application, I grant the Landlord a monetary award of \$100.00 for recovery of the filing fee, pursuant to section 72(1) of the Act.

For the reasons set out above, I find that the Landlord is entitled to a monetary award in the amount of \$2,465.00 (comprised of \$2,250.00 for unpaid rent, \$115.00 for late fees, and \$100.00 for the filing fee). Further, I order that the security deposit (\$375.00) held be applied to the award granted to the Landlord, pursuant to section 72 of the Act. I therefore grant the Landlord a monetary order for \$2,090.00.

Order of Possession

Section 55(1)(b) of the Act states that a landlord may request an order of possession of a rental unit when a notice to end the tenancy has been given by the landlord, and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

The Landlord testified that Tenant has not paid rent for May, June, and July 2018. The Landlord served the Notice on the Tenant's door on May 7, 2018, which is deemed to be received on May 10, 2018, with a corrected end of tenancy date of May 20, 2018. The Tenant did not dispute the notice by making an application for dispute resolution within the time permitted to make that application.

Applying section 55 of the Act to the unchallenged testimony regarding the Tenant's failure to pay rent for May, June, and July 2018, and regarding the Tenant's failure to apply for dispute resolution, pursuant to sections 46 and 55 of the Act, I hereby grant an order of possession to the Landlord.

This order is effective two days after service upon the Tenant.

Conclusion

I hereby grant the Landlord a monetary order for \$2,090.00. This order must be served on the Tenant and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Landlord is granted an order of possession for unpaid rent. This order must be served on the Tenant and is effective two (2) days after service on the Tenant. This order may be filed in and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: July 17, 2018

Residential Tenancy Branch