



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNRL-S, OPR

Introduction

This decision pertains to the Landlord's application for dispute resolution made on May 25, 2018, under the *Residential Tenancy Act* (the "Act"). The Landlord seeks an order of possession for unpaid rent, a monetary order for damage to the rental unit's kitchen floor, a monetary order for unpaid rent, and a monetary order for recovery of the filing fee.

The Landlord's agent (the "Agent") 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 hearing.

The Agent testified that he served the Tenant with the Notice of Dispute Resolution Proceeding package (the "Package") by registered mail on June 1, 2018. The Agent submitted into evidence a copy of the Canada Post Registered Mail receipt and tracking number. The Package was deemed received on June 6, 2018, pursuant to subsection 90(a) of the Act.

I find that the Landlord served the Tenant with the Package in compliance with section 89 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.

Preliminary Issues

Name of Landlord on the Application for Dispute Resolution

Upon reviewing the application and documentary evidence submitted by the Agent, I noted that the Landlord's name is listed as the landlord in the 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice"), but in the application. The landlord's name in the application was that of the Agent.

The Agent confirmed that he was the building manager for the Landlord, and that the application should be amended to list the Landlord's name, as it appears in the 10 Day Notice. I therefore amend the application to include the Landlord's name as the Applicant, and remove the Agent's name.

Names of Tenants on the Application for Dispute Resolution

The Landlord's application included two tenants. However, in reviewing the application with the Agent, the Agent confirmed that only one of the two "tenants" is the legal Tenant, while the other person is an occupant. The occupant is the Tenant's daughter, who previously dealt with the Agent on many occasions as a "tenant," trying to make arrangements for the payment of rent, for example. The Agent sought to amend the application to remove the name of the occupant as a party to this dispute. The application is amended.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent?
2. Is the Landlord entitled to a monetary order for damage to the rental unit's kitchen floor?
3. Is the Landlord entitled to a monetary order for unpaid rent?
4. Is the Landlord entitled to a monetary order for recovery of the filing fee?
5. If the Landlord is entitled to a monetary order regarding the above-noted claims, is he entitled to retain the security and pet damage deposits, pursuant to section 72 of the Act, in partial satisfaction of those claims?

Background and Evidence

The Agent testified that the Tenant moved into the rental unit in December 2014. Monthly rent was \$875.00, and the Tenant paid a security and pet damage deposits of

\$425.00 and \$425.00, respectively. The Tenant currently resides in the rental unit. The Landlord did not submit into evidence a copy of a written tenancy agreement.

The Tenant has not paid rent for over a year, with only occasional, sporadic partial payments. As of the date of this hearing the Tenant owes \$13,437.00 in unpaid rent. In January 2018, the Tenant proposed to make bi-weekly payments of \$300.00 toward the rent. While the Tenant did pay varying amounts twice a month for a few months, these payments stopped. The Agent submitted into evidence a copy of the Tenant's letter proposing to make the payments.

After the Tenant failed to repay overdue and unpaid rent, or keep up with previous payment arrangement, the Agent testified that he served the Tenant with a 10 Day Notice for unpaid rent, in-person, on May 10, 2018, with an effective end of tenancy date of May 20, 2018. The 10 Day Notice was submitted into evidence.

The Landlord also claims for damage caused, by the Tenant's dog, to the rental unit's kitchen floor linoleum. In my reviewing the application with the Agent, however, the Agent acknowledged that he had submitted no documentary evidence of the damage, and testified that because he does not currently have an exact idea as to the extent of the damage, has not yet priced out the cost of repairing the floor.

I explained to the Agent that there is insufficient evidence before me for me to consider this aspect of his claim. I further explained that the Agent may wish to bring a new claim after the Tenant has vacated the rental unit, such that he will be in a better position to assess the damage and determine, with greater accuracy, the cost to repair the floor.

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.

Subsection 55(2)(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.

I find that the Tenant has conclusively presumed to have accepted the end of the tenancy given that the Tenant has not applied to dispute the 10 Day Notice, nor has she paid the rent.

Applying section 55 of the Act to the unchallenged testimony regarding the Tenant's failure to pay rent, 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.

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.

The Agent testified, and provided documentary evidence to support his submission, that the Tenant has not paid rent for November 2017 to July 2018, inclusive, and that the Tenant currently owes \$13,437.00 in unpaid rent. Further, there is no evidence before me that the Tenant had a right under the Act to deduct some or all of the rent, and, no evidence indicating that she applied to cancel the Notice.

Taking into consideration all the evidence and unchallenged testimony, 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 regarding unpaid rent. The Landlord is entitled to a monetary award for unpaid rent in the amount of \$13,437.00.

Further, I order that the security and pet damage deposits held be applied to the award granted to the Landlord, pursuant to section 72 of the Act.

Finally, I grant the Landlord a monetary award of \$100.00 for recovery of the filing fee.

A total monetary order of \$12,687.00 for the Landlord is calculated as follows:

Claim	Amount
Unpaid rent	\$13,437.00

Filing fee	\$100.00
LESS security and pet damage deposits	(\$850.00)
Total:	\$12,687.00

As I have previously noted, there is insufficient evidence before me to consider the Landlord's claim for compensation for damage to the rental unit's kitchen, and dismiss that aspect of his claim with leave to reapply.

Conclusion

I grant the Landlord an order of possession of the rental unit for unpaid rent. This order must be served on the Tenant and is effective two days after service on the Tenant. This order may be filed in and enforced as an order of the Supreme Court of British Columbia.

I grant the Landlord a monetary order in the amount of \$12,687.00. 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).

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