



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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an order of possession for non-payment of pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. A representative of the landlord (hereinafter referred to as the landlord) 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 and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was served the notice of dispute resolution package via Canada Post registered mail on December 21, 2018, and she provided a Canada Post tracking number (which is listed on the cover page of this decision). I find that the tenant is deemed served with this package on December 26, 2018, five days after the landlord sent it, in accordance with sections 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to:

- an retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested;
- an order of possession for unpaid rent;
- monetary compensation for unpaid rent; and
- recover the filing fee for this application?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of its submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord submitted evidentiary material including:

- A copy of a fixed-term tenancy agreement which:
 - was signed by the landlord and the tenant on November 30, 2017;
 - started December 1, 2017 and ended November 30, 2018;
 - lists the monthly rent as \$1,400.00, due on the first day of each month
 - required the tenant to pay a \$700 security deposit and \$700 pet damage deposit to the landlord (the landlord confirms that it retains these funds in trust);
 - provides a reduction to the monthly rent in the amount of \$100 for the first twelve months of the tenancy (the landlord confirmed that for the first 12 months, the tenant provided monthly rent payment in the amount of \$1,300);
 - stipulates that, if the tenant renews on a month to month basis after the one year term, he will no longer receive this monthly deduction; and
 - Includes a late payment of rent fee of \$25 per month;
- A copy of a Notice of Rent Increase form dated August 20, 2018 notifying the tenant of a monthly rent increase of \$55 effective December 1, 2018;
- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord sets out its claim for unpaid rent owed by February 1, 2019 in as follows:

Balance of December 2018 rent	\$455
December 2018 late fee	\$25
January 2019 rent	\$1,455
February 2019 rent	\$1,455

\$3,390

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) dated December 6, 2018 for \$1,455 in unpaid rent due on December 1, 2018, with a stated effective vacancy date of December 16, 2018;
- A copy of a ledger, dated December 19, 2018, which shows that the tenant provided a partial payment of rent in the amount of \$1,000 on December 6, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of posting it to the door of the rental unit on December 6, 2018. The Proof of Service form states that the service of the Notice was witnessed and a name and signature for the witness are included on the form.

The landlord testified that (as of January 31, 2019) the tenant continues to reside in rental unit, and has not paid the balance of December 2018 rent, nor rent for January 2019 or February 2019.

The Notice states that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleges that the tenant did not pay the rental arrears.

Analysis

Order of Possession

I have reviewed all documentary evidence provided by the landlord. Section 90 of the Act provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the Act, I find that the tenant is deemed to have received the Notice on December 9, 2018, three days after its posting.

I accept the landlord’s undisputed evidence and find that the tenant did not pay the rent owed, as specified on the Notice, in full within the five days granted under section 46(4) of the Act and did not apply to dispute the Notice within that five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the Notice, December 29, 2018.

Monetary Order

I accept the landlord's evidence that the tenant has failed to pay the balance of the December rent, or the January rent in the amount of \$1,910.

This matter came to hearing at 9:30 a.m. on February 1, 2019. Per the tenancy agreement, the tenant has until the end of the day on February 1, 2019 to pay February's rent. As such, the February 2019 rent is not yet due and owing by the tenant. Accordingly, I decline to make any monetary order for that month.

I find that the tenant is obligated to pay a late payment of rent fee for December 2018 in the amount of \$25.

While I accept the landlord's evidence regarding the tenant's non-payment of rent, I do not accept its evidence regarding the amount of monthly rent owed. I find that, notwithstanding its characterization in the tenancy agreement, the clause of the agreement providing the tenant with a "deduction" of \$100/month for the first 12 months of the tenancy is, in substance, a method by which the landlord sought to *increase* the rent after 12 months.

Section 43 of the Act requires that rent increase only be made as proscribed by the *Residential Tenancy Regulation*, BC Reg 477/2003, which, at the time the fixed term tenancy expired (and the "deduction" was removed) was 4%.

Section 5 of the Act reads:

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

I find that the rent "deduction" arrangement outlined above is an attempt by the landlord to avoid the rent increase provisions of the Act. Accordingly, I find that the monthly rent from December 1, 2017 to November 1, 2018 is \$1,300 (what the tenant actually paid), and not \$1,400.

The landlord increased the monthly rent by \$55 on December 1, 2018. This amount is 3.928% of \$1,400 (up to a 4% was permitted in 2018). A \$55 monthly rent increase

represents a 4.23% increase on \$1,300. Accordingly, a rent increase of \$55 is in violation of the Act. At the time the Notice of Rent Increase was issued, the maximum allowable increase in rent on \$1,300 is \$52. Accordingly, I find that the landlord is entitled to increase monthly rent by \$52, as of December 1, 2018.

Section 7(1) of the Act establishes that a tenant who does not comply with the Act, the regulations, or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The landlord provided undisputed testimony and written evidence, demonstrating that rent was not paid for December 2018 or January 2019.

Pursuant to section 67 of the Act, I find that the landlord is entitled to a monetary award of \$1,929 for unpaid rent and a late fee.

The landlord holds a security deposit and a pet damage deposit each in the amount of \$700 (\$1,400 total), and has applied to set this amount off against and monetary order I make. Pursuant to section 72(2), I order that the security deposit and pet damage deposit may be so set off.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

In summary, I find that the landlord is entitled to a monetary order against the tenant for unpaid rent as follows:

Balance of December 2018 rent	\$452
December 2018 late fee	\$25
January 2019 rent	\$1,452
February 2019 rent	\$0
Filing fee reimbursement	\$100
Security and Pet Damage deposits (credit)	-\$1,400
	\$629

Conclusion

I grant an order of possession to the landlord effective two days after service of this order on the tenant. Should the tenant fail to comply with this order, this order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the security and pet damage deposits in partial satisfaction of the rent owed by the tenant.

Pursuant to sections 67 and 72 of the Act, I find that the landlord is entitled to a monetary order in the amount of \$629 for the balance unpaid rent and late fees, and for the recovery of the filing fee for this application. Should the tenant fail to comply with this order, this order may be filed in, and enforced as an order of, the Small Claims Division of the Provincial Court.

The landlord is provided with these orders in the above terms and must serve the tenant with these Orders as soon as possible.

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: February 06, 2019

Residential Tenancy Branch