



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 527802 B.C LTD., INC.NO. 527802
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDL-S MNRL-S OPC OPR

Introduction

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

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*;
- an Order of Possession for Cause, pursuant to sections 47 and 55 of the *Act*;
- a Monetary Order for unpaid rent and compensation for damage or loss, and authorization to retain the security deposit in partial satisfaction of this monetary claim, pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant joined the hearing late approximately 20 minutes after the start of the hearing. Landlord's agents R.P. and A.M. attended to on behalf of the corporate landlord.

As both parties were present, service of documents was confirmed. The landlord's agent R.P. testified that the tenant was personally served on June 23, 2019 with the Notice of Dispute Resolution Proceeding and evidence related to the primary claim for the Order of Possession on the basis on unpaid rent. The tenant confirmed receipt of this service.

As such, I find that the tenant was served with the notice of this hearing and the evidence considered in this matter in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Unrelated Claim

The landlord's application included an unrelated claim for compensation for damages to the rental unit, in addition to their priority application for an Order of Possession for unpaid rent and the unpaid rent owed.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the claim for compensation for damages to the rental unit is not related to the landlord's primary application for an Order of Possession on the basis of unpaid rent and the rent owed, and therefore it is dismissed. I grant the landlord liberty to reapply for this claim subject to any applicable limits set out in the *Act*.

Preliminary Issue – Order of Possession Claim Dismissed

Both the landlord's agent and the tenant confirmed that the tenant vacated the rental unit on June 29, 2019. As the landlord has regained possession of the rental unit, I dismiss the landlord's application for an Order of Possession as it is now moot.

Issue(s) to be Decided

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

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

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence. The parties confirmed the following details pertaining to this tenancy:

- This tenancy began on February 1, 2015 as a fixed-term tenancy scheduled to end on February 1, 2016, at which time the tenancy converted to a month-to-month tenancy.
- Monthly rent of \$1,500.00 was payable on the first of the month.

- At the beginning of the tenancy, the tenant paid a security deposit of \$750.00, which continues to be held by the landlord.

The landlord's agent R.P. testified that the tenant failed to pay rent for May and June 2019 as the rent cheques were returned insufficient funds. The landlord's agent referred to copies of the returned cheques submitted into documentary evidence.

The tenant confirmed that she had failed to pay rent for May and June 2019. She testified that she had not made any payments to date towards the outstanding rent owed of \$3,000.00 and she did not know how or when she would be in a financial position to do so as she stated she is a single mother and has no money at this time.

Analysis

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

No evidence was presented at the hearing that the tenant had a right under the *Act* to deduct all or a portion of the rent.

Therefore, based on the undisputed testimony and evidence of the landlord and tenant regarding the terms of the tenancy agreement and the evidence before me, on a balance of probabilities, I find that the tenant was obligated to pay monthly rent in the amount of \$1,500.00 on the first of the month, and that the tenant failed to pay rent in full when it was due for the months of May and June 2019.

In light of the above, I find that the landlord is entitled to a monetary award in the amount of \$3,000.00 for rental arrears owed by the tenant.

As the landlord continues to hold the tenant's \$750.00 security deposit, I order that the landlord retain this deposit in partial satisfaction of the monetary award owed by the tenant.

Therefore, in accordance with section 72 of the *Act*, I set-off the amount of the monetary award owed by the tenant to the landlord against the amount of the security deposit held by the landlord.

As the landlord was successful in obtaining a monetary award against the tenant, the landlord is entitled to recover the cost of the \$100.00 filing fee from the tenant.

As such, I find that the landlord is entitled to a Monetary Order of \$2,350.00 as explained below.

Item	Amount
Rental arrears owed by the tenant (\$1,500.00 x 2 months)	\$3,000.00
Recovery of the filing fee from the tenant	\$100.00
LESS: Landlord to retain deposits in partial satisfaction of monetary award	(\$750.00)
Total Monetary Order in Favour of Landlord	\$2,350.00

Conclusion

I order the landlord retain the security deposit of \$750.00 in partial satisfaction of the landlord's entitlement to a monetary award for rental arrears.

For the remaining amount of the monetary award owed to the landlord, I issue a Monetary Order in the landlord's favour against the tenant in the amount of \$2,350.00, to be served on the tenant. 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.

The landlord's claim for compensation for damages to the rental unit is dismissed with leave to reapply.

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: July 23, 2019

Residential Tenancy Branch