



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPR, OPRM-DR, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an order of possession, further to having served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated September 30, 2019; for a monetary order for unpaid rent for September 1, 2019 of \$950.00 and to recover the \$100.00 cost of their Application filing fee.

The Landlord, T.Z., and an agent for the Landlord, P.M. (the "Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 45 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlord and the Agent, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Landlord and the Agent.

I explained the hearing process to the Landlord and Agent and gave them an opportunity to ask questions about the hearing process. During the hearing the Agent and the Landlord were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rule"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Given that the Tenant did not attend the hearing, I asked the Agent about how the Tenant was served with the Application, the Notice of Hearing and the documentary evidence. The Agent said he served the Tenant with these documents, including amended documents via registered mail on October 11, 2019, and he submitted a copy of the registered mail tracking number. I find that the Tenant was deemed served with the registered mail package on October 16, 2019, pursuant to section 90 of the Act.

Preliminary and Procedural Matters

The Agent provided his email address at the outset of the hearing and confirmed his understanding that the Decision would be emailed to the Landlord, mailed to the Tenant, and that any Orders would be sent to the appropriate Party in this manner.

At the outset of the hearing, I asked the Agent for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement. The Agent advised me that he is the registered owner of the residential property and the Landlord, T.Z., signed the tenancy agreement. I, therefore, have amended the Applicant's name in the Application to reflect this information, pursuant to section 64(3)(c) and Rule 4.2.

The Landlord applied for recovery of \$950.00 in unpaid rent, as of September 30, 2019; however, the Agent said that the Tenant has not paid rent for October or November 2019, either. The Agent said that the amount owing is now up to \$2,850.00, in rent and \$225.00 in utilities, as the Tenant has not paid any rent since August 29, 2019, for rent owing in July and August 2019. The Agent requested that the Application for a monetary order be increased to this amount to \$2,850.00 to reflect the increased debt.

Pursuant to Rule 4.2 and section 64(3)(c) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought, reflecting the ongoing failure of the Tenant to pay her monthly rent owing. I find no prejudice to the Tenant, as she is aware of how much rent she has or has not paid, so she could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after correcting the Landlord's initial amount claimed, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenant from \$950.00 to \$2,850.00. I will address the utilities owing below.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Agent confirmed the evidence in the tenancy agreement that the periodic tenancy began on February 1, 2019, with a monthly rent of \$950.00, due on the first day of each

month. The Agent said the Tenant paid a security deposit of \$450.00, and a pet damage deposit of \$450.00; however, the Agent explained that he allowed the Tenant to clean out the rental unit at the start of the tenancy, instead of paying these deposits. The Agent said he believed that the Tenant overstated the number of hours it took her to clean the rental unit; however, he acknowledged that he had agreed to this manner of the Tenant paying the Landlord for the security and pet damage deposits.

The Agent said that the tenancy agreement states that the Tenant is to pay the Landlord \$75.00 per month in utilities for the Tenant's use of the lights, and the washer and dryer. The Agent also noted that the tenancy agreement states that the Tenant is responsible to pay a penalty of \$25.00 per day for late rent. This term is handwritten onto the third page of the tenancy agreement and is not initialled by the Tenant.

In answer to being questioned as to whether the Landlord made a written demand of the Tenant for unpaid utility charges, the Agent said the Tenant was served with eviction notices for unpaid rent and utilities. He did not direct me to a copy of a written demand giving the Tenant 30 days to pay the utilities owing.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Based on the documentary evidence and testimony before me for consideration, and pursuant to section 90 of the Act, I find that the Tenant was served with the 10 Day Notice on September 30, 2019, after it was delivered in person.

Section 46(5) of the Act states that if a tenant who has received a 10 Day Notice does not apply for dispute resolution within 5 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

As there is no evidence before me that the Tenant disputed the 10 Day Notice, I find that she is conclusively presumed under section 46(5) of the Act to have accepted the 10 Day Notice, and I find that the tenancy, therefore, ended on October 10, 2019. As a result, I find that the Tenant is overholding the rental unit and the Landlord is therefore entitled to an Order of Possession pursuant to section 55(2)(b) of the Act. As the vacancy effective date has passed and the Agent testified that rent for three months has

not been paid, the Order of Possession will therefore be effective two days after service on the Tenant.

With regard to the utilities claimed, section 46(6) of the Act states:

46 (6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Accordingly, as the Landlord did not comply with section 46(6), I find that the Landlord is not entitled to treat the utilities owing as unpaid rent. I dismiss this claim without leave to reapply.

In terms of the Landlord's fee of \$25.00 per day for late rent, I refer the Landlord to the following. The *Residential Tenancy Act* Regulation sets out the allowable fees that can be charged by a landlord:

Non-refundable fees charged by landlord

7 (1) A landlord may charge any of the following non-refundable fees:

(a) direct cost of replacing keys or other access devices;

(b) direct cost of additional keys or other access devices requested by the tenant;

(c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;

(f) a move-in or move-out fee charged by a strata corporation to the landlord;

(g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

In this case, the Tenant did not pay rent at all, as opposed to having given cheques with insufficient funds. I find that the Landlord cannot impose the \$25.00 fee in this case, as the Agent did not direct me to a section of the Act or Regulation that authorizes this. Further, pursuant to Policy Guideline #8 "Unconscionable and Material Terms", I find that charging a tenant \$25.00 per day for every day the rent is late is an unconscionable and unenforceable term. In addition, the Tenant did not initial her acceptance of this term in the tenancy agreement.

I find that the Landlord has established a monetary claim in the amount of \$2,850.00 comprised of the rent owing for September, October, and November 2019, plus recovery of the \$100.00 Application filing fee for a total monetary award of **\$2,950.00**.

I find that the Parties agreed that the Tenant would pay for her security and pet damage deposits by cleaning the rental unit at the start of the tenancy for the Landlord. Accordingly, I find that the Tenant has paid \$850.00 in security and pet damage deposits.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's \$850.00 security and pet damage deposits in partial satisfaction of the Landlord's monetary claim.

I grant the Landlord a monetary order pursuant to section 67 of the Act for the balance of the award owing by the Tenant to the Landlord in the amount of **\$2,100.00**.

Conclusion

The Landlord's claim for compensation for unpaid rent against the Tenant is successful, as the Tenant failed to pay rent for September, October and November 2019.

The Landlord has established a monetary claim of \$2,850.00. The Landlord is also awarded recovery of the \$100.00 Application filing fee. I authorize the Landlord to retain the Tenant's full security and pet damage deposits of \$850.00 in partial satisfaction of the claim. The Landlord has been granted a monetary order under section 67 for the balance due by the Tenants to the Landlord in the amount of **\$2,100.00**.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: November 18, 2019

Residential Tenancy Branch