



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OBION HOLDINGS LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNC, CNL, ERP, RP, PSF, LRE, OLC, FFT
OPR, MNRL-S, MNDCL-S, LRSD, FFL

Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlord.

The tenant has applied for:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- an order cancelling a notice to end the tenancy for cause;
- an order cancelling a notice to end the tenancy for landlord's use of property;
- an order that the landlord make emergency repairs for health or safety reasons;
- an order that the landlord make repairs to the rental unit or property;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law;
- an order limiting or setting conditions on the landlord's right to enter the rental unit;
- an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

The landlord has applied for:

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order permitting the landlord to keep all or part of the security deposit or pet damage deposit; and

- to recover the filing fee from the tenant.

Both parties attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing, the landlord's agent submitted that the landlord also seeks a monetary order for damage to the rental unit or property, and provided a Monetary Order Worksheet 3 days prior to the hearing. The landlord has provided all evidence to the tenant, with the exception of the Monetary Order Worksheet. I advised the landlord's agent that no such application is before me, and a tenant must be put on notice that such an application is made. Since the landlord has not applied for a monetary order for damage to the rental unit or property, I declined to consider that evidence or any testimony regarding damages.

The parties agree that all other evidence has been exchanged, all of which has been reviewed and the evidence I find relevant to the applications is considered in this Decision.

Also, during the course of the hearing, the parties agreed that the tenant has vacated the rental unit. Therefore, I dismiss the tenant's application in its entirety without leave to reapply. Similarly, since the tenant has vacated the rental unit, I dismiss the landlord's application for an order of possession.

During the course of the hearing the tenant continually interrupted me and the landlord, and both parties were very argumentative despite multiple warnings.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for N.S.F. fees or late payment of rent, or interest on unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on February 1, 2023 and was to revert to a month-to-month tenancy after January 1, 2024. However, an Expedited Hearing was held on August 4, 2023 which resulted in an order requiring the tenant to vacate the rental unit. Rent in the amount of \$1,450.00 was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$725.00, and the Arbitrator at the August 4, 2023 hearing ordered that the landlord retain \$100.00 of the security deposit to recover the filing fee from that hearing, and the landlord still holds \$625.00 in trust. No pet damage deposit was collected. The rental unit is a studio apartment in a 16 suite building, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that the tenant owes rent for the months of June, July and August, 2023, and the landlord claims \$4,350.00. The tenancy agreement also provides for a fee of \$40.00 for N.S.F. or late payments of rent, however knowing that the *Act* allows \$25.00, the landlord claims that amount.

The tenancy agreement also provides for 24% interest per annum on overdue rent, and the landlord claims \$116.00 for June, \$58.00 for July and \$29.00 for August, 2023, for a total of \$203.00 from the first day that rent was due for those months, calculated to today.

The tenant's rent cheque for June was returned N.S.F., and the landlord refused rent cheques after that.

The Arbitrator at the Expedited Hearing on August 4, 2023 ordered that the tenant vacate the rental unit by August 13, 2023, and the tenant moved out a few days after that. The rental unit was re-rented for September 1, 2023.

The tenant has not provided the landlord with a forwarding address.

The tenant testified that a person threw a rock through the window of the rental unit, and the tenant called police. A neighbour who witnessed it went to see if the tenant was okay. The tenant didn't feel the need to pay rent because the landlord said it was a friend of the tenant who damaged the window and wouldn't help the tenant with reimbursement for repairs. The tenant believes it was the same person who smashed a window of the lobby and attended at the rental unit and kicked in the door. Police

arrived again. That was the 2nd month. The tenant asked to have the door fixed multiple times, and stayed with his mother for some time.

The landlord failed to connect the buzzer in the rental unit, so visitors would throw pebbles at the tenant's window to attract his attention, but not a brick.

The landlord has been more aggressive with the tenant than the tenant has been toward the landlord's agent. The tenant has never been treated with respect and no repairs have been done by the landlord. The tenant could not live a normal life, had no front door, and a broken window. The tenant attempted to pay rent if the landlord repaired the damages, but the landlord refused and would not accept a cheque for the payment of rent. The tenancy agreement says that rent has to be paid by cheque.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The landlord's agent urges that I read the Decision of the director after the August 4, 2023 hearing, which was based on evidence and findings were made that rent was not paid.

SUBMISSIONS OF THE TENANT:

There is no proof that the tenant caused the damage. The tenant didn't pay rent due to the landlord's failure to repair the window and doors, but laughed at the matter.

Analysis

Firstly, the *Residential Tenancy Act* states that a tenant must pay rent when it is due even if the landlord fails to comply with the *Act* or the tenancy agreement. In this case, the tenant does not deny that rent wasn't paid. Therefore, I find that the landlord has established a claim of unpaid rent in the amount of \$4,350.00.

I have also reviewed the tenancy agreement, which specifies a \$40.00 charge for late payment of rent or N.S.F. cheques, and I agree with the landlord's agent that the law permits only \$25.00. I am satisfied that the tenant has been late with rent for the months of June, July and August, 2023, and I grant a monetary order in favour of the landlord in the amount of \$75.00.

With respect to the verbal claim of the landlord for 24% per annum on overdue rental payments, I refer to the regulations to the *Residential Tenancy Act*, which specifies that 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.

Neither the *Act* nor the regulations permit interest on overdue rent, and I dismiss that portion of the landlord's verbal application.

I also note that the tenancy agreement provides for liquidated damages to be deducted from the security deposit. That is not permitted under the *Act*. A tenancy agreement must not specify that a security deposit be forfeited for any reason. A landlord must return a security deposit to a tenant in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against the security deposit within that 15 day period. In this case, I accept the undisputed testimony of the landlord's agent that the tenant has not provided the landlord with a forwarding address in writing.

Having found that the landlord is owed \$4,350.00 for unpaid rent and \$75.00 for late payment or N.S.F. fees for the months of June, July and August, 2023, the landlord is also entitled to recover the \$100.00 filing fee from the tenant.

I order that the landlord keep the remaining \$625.00 of the security deposit in partial satisfaction, and I grant a monetary order in favour of the landlord as against the tenant for the difference in the amount of \$3,900.00. The tenant must be served with the order which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

The landlord's application for an order of possession for unpaid rent or utilities is hereby dismissed without leave to reapply.

I hereby order the landlord to keep the remaining \$625.00 security deposit and I grant a monetary order in favour of the landlord against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,900.00.

This order is final and binding and may be enforced.

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: September 21, 2023

Residential Tenancy Branch