



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RE/MAX MID-ISLAND REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: OPR MNR FF
For the tenants: CNR FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order unpaid rent or utilities, and to recover the filing fee.

The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), and to recover the filing fee.

An agent for the landlord (the “agent”) attended the hearing. The tenants did not attend the hearing. As the tenants did not attend the hearing to present the merits of their application, the tenants’ application was **dismissed, without leave to reapply**, after the 10 minute waiting period had elapsed. The hearing continued with consideration of the landlord’s application.

The hearing process was explained to the agent, and the agent was given an opportunity was given to ask questions about the hearing process. Thereafter the agent gave affirmed testimony, was provided the opportunity to present her relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

The agent testified that female tenant “LR” was served by registered mail at the rental unit address on April 28, 2014, with the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), the landlord’s Application for Dispute Resolution (the “Application”), and documentary evidence. A tracking number was submitted in evidence.

Preliminary and Procedural Matter

The agent was advised during the hearing that due to tenant "LR" being the only tenant to be served, if the landlord was successful with any portion of their monetary claim and a monetary order was granted, any resulting monetary order would name tenant "LR" only. The agent stated that she wished to proceed with the hearing and that she understood that any resulting monetary order would name the female tenant "LR" only as she was the only tenant served with the Notice of Hearing and Application. Furthermore, if the landlord was successful with an order of possession, the order of possession would name tenant "LR" but would include all occupants of the rental unit, including but not limited to tenant "SR". Based on the above, I accept that tenant "LR" was deemed served in accordance with section 90 of the *Act* as of May 4, 2014.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy agreement began on October 15, 2013, and was scheduled to revert to a month to month tenancy after October 31, 2014. Monthly rent in the amount of \$850.00 was due on the first day of each month. The tenant paid a security deposit of \$425.00 and only \$250.00 of a \$300.00 pet damage deposit, which resulted in a pet damage deposit of \$250.00 only.

The agent testified that the tenants failed to pay \$350.00 in rent for the month of April 2014, and that although May 2014 rent was paid in full, the landlord did not reinstate the tenancy as a receipt for "use and occupancy only" was issued to the tenants. The landlord is seeking an order of possession as the tenants continue to occupy the rental unit, \$350.00 in unpaid rent for the month of April 2014, plus the recovery of the filing fee. The agent verbally requested to offset the unpaid rent owed from the security deposit and pet damage deposit of the tenants during the hearing.

The agent stated that the 10 Day Notice dated April 10, 2014 was served personally on the tenants at the rental unit at 11:00 a.m., on April 10, 2014, which was witnessed by the agent's brother, "DK".

Analysis

Based on the undisputed testimony of the agent and the documentary evidence before me, and on the balance of probabilities, I find the following.

Order of possession – Section 55 of the *Act* requires that I must grant an order of possession once I have dismissed the tenants' application to dispute a notice to end tenancy, and the agent has made a request for an order of possession. As the tenants failed to attend the hearing, and the tenants' application to cancel the 10 Day Notice dated April 10, 2014 was dismissed without leave to reapply, **I grant** the landlord an order of possession pursuant to section 55 of the *Act* **effective two (2) days** after service on the tenants. The tenants must be served with the order of possession.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Landlord's claim for unpaid rent of \$350.00 for April 2014 – I accept the undisputed testimony of the agent that the tenants failed to pay a \$350.00 portion of April 2014 rent and that the landlord did not reinstate the tenancy by issuing a receipt for "use and occupancy only" for May 2014 rent received. Section 26 of the *Act* requires that tenants pay rent when it is due in accordance with the tenancy agreement, whether or not the landlord complies with the *Act*. Therefore, I find the tenants have breached section 26 of the *Act* by failing to pay \$350.00 of April 2014 rent. Therefore, I find the landlord has met the burden of proof and is entitled to **\$350.00** in compensation for unpaid rent as claimed.

The landlord continues to hold the tenants' security deposit of \$425.00 and \$250.00 pet damage deposit, neither of which has accrued interest since the start of the tenancy. As the landlord's claim had merit, **I grant** the landlord the recovery of his **\$50.00** filing fee.

I find that the landlord has established a total monetary claim of **\$400.00** as follows:

Item 1	Unpaid portion of April 2014 rent	\$350.00
Item 2	Recovery of filing fee	\$50.00
	TOTAL OF LANDLORD'S MONETARY CLAIM	\$400.00
	<i>Less the tenants' full pet damage deposit of \$250.00 and less \$150.00 of the tenants' security deposit for a total of \$400.00</i>	<i>-\$400.00</i>

Pursuant to section 72 of the *Act*, **I ORDER** the landlord to retain the tenants' full pet damage of \$250.00 plus \$150.00 of the tenants' security deposit in full satisfaction of the landlord's monetary claim. The remaining balance of the tenants' security deposit of \$275.00 must be dealt with in accordance with section 38 of the *Act*.

Conclusion

The tenant's application was dismissed in full, without leave to reapply.

The landlord has been granted an order of possession effective two (2) days after service on the tenants. This order must be served on the tenants and may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

The landlord has established a total monetary claim of \$400.00 and has been ordered to retain the tenants' full pet damage deposit of \$250.00, plus \$150.00 of the tenants' security deposit in full satisfaction of the landlord's monetary claim. The remaining balance of the tenants' security deposit of \$275.00 must be dealt with in accordance with section 38 of the *Act*.

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: May 29, 2014

Residential Tenancy Branch