



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, MNR, MNSD, FF

Introduction

This Hearing was scheduled to hear the Landlords' application for an Order of Possession; a Monetary Order for loss of revenue; to apply the security deposit and pet damage deposits towards satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenants.

The Landlords' agent gave affirmed testimony at the Hearing.

The Landlords' agent testified that a copy of the Notice of Hearing documents and the Landlords' documentary evidence was sent to each of the Tenants, via registered mail to the rental unit on June 30, 2011. The Landlords' agent provided the tracking numbers for both of the registered mail documents. He testified that the documents were returned to him on July 6, 2011, unclaimed.

Section 90 of the Act deems documents served by registered mail to be received 5 days after mailing the documents, whether or not the recipients choose to accept delivery of the documents. Therefore, I find that the Tenants were served with the Notice of Hearing documents on July 6, 2011.

The Hearing was scheduled to commence by telephone conference at 1:30 p.m., July 31, 2011. By 1:40 p.m., neither Tenant had signed into the conference and the Hearing proceeded in their absence.

Issues to Decide

Are the Landlords entitled to an Order of Possession?

Are the Landlords entitled to a Monetary Order for loss of revenue?

Background and Evidence

On May 12, 2011, the Landlord's agent issued a One Month Notice to End Tenancy for Cause (the "Notice"). He posted the Notice on the Tenant's door at 4:10 p.m. on May 14, 2011.

The Notice discloses the following reason for ending the tenancy:

- Tenant is repeatedly late paying rent.

The Landlord provided a copy of the Tenant Ledger in evidence. The Landlord's agent testified that in addition to the 5 times the Tenants were late paying rent since November, 2010, the Tenants were 23 days late paying rent in June and have not paid anything towards July rent.

Monthly rent is \$1,350.00, due on the first day of each month and does not include utilities. The Tenants paid a security deposit in the amount of \$675.00 and a pet damage deposit in the amount of \$675.00 on February 36, 2010.

The Landlords seek an Order of Possession and a monetary award, calculated as follows:

Date	Description	Charges	Payments	Balance
Jan – Mar/11	Utilities	\$253.18		\$441.25
Jun 1/11	Rent	\$1,350.00		\$1,791.25
Jun 23/11	Cash payment		\$1,820.00	\$28.75 Credit
July 1/11	Rent	\$1,350.00		\$1,321.25

Analysis

Section 26 of the Act requires a tenant to pay rent **when it is due**.

Section 47(1)(b) of the Act provides that a landlord may issue a notice to end the tenancy **if the tenant is repeatedly late paying rent**. Section 47(4) of the Act provides that a tenant may dispute the notice by making an application for dispute resolution **within 10 days** after the date the tenant receives the notice.

Based on the undisputed testimony of the Landlords' agent, I find that the Tenants have been late paying rent 6 times within the last year. Residential Tenancy Branch Policy Guideline #38 provides that three late payments are the minimum number sufficient to justify a notice under Section 47 of the Act.

The Landlord served the Tenants with the Notice by posting it to the Tenants' door on May 14, 2011. Section 90 of the Act deems service in this manner to be effected 3 days after posting the Notice. Therefore, I find that the Tenants were served with the Notice on May 17, 2011. The Tenants did not dispute the Notice or file an application to dispute the Notice within 10 days of receipt. Therefore, pursuant to the provisions of Section 47(5)(a) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on June 30, 2011. The Landlords are entitled to an Order of Possession.

Based on the undisputed testimony of the Landlords' agent, I find that the Landlords are entitled to a monetary award in the amount of \$1,321.25.

The Landlords have been successful in their application and are entitled to recover the cost of the filing fee from the Tenants.

Pursuant to the provisions of Section 72(20(b) of the Act, the Landlords may apply the security deposit and pet damage deposit towards satisfaction of their monetary award.

The Landlords are entitled to a Monetary Order, calculated as follows:

Monetary award	\$1,321.25
Plus recovery of filing fee	<u>\$50.00</u>
Subtotal	\$1,371.25
Less security deposit	<\$675.00>
Less pet damage deposit	<u><\$675.00></u>
Balance to Landlord after set-off	\$21.25

Conclusion

I hereby provide the Landlord an Order of Possession effective **2 days after service of the Order upon the Tenants**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby grant the Landlord a Monetary Order in the amount of **\$21.25** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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 26, 2011.

Residential Tenancy Branch