



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities, to keep all or part of pet and or security deposit, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlords to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail to the forwarding address provided by the Tenant, on April 5, 2012. Mail receipt numbers were provided in the Landlord's verbal testimony. The envelope was returned to the Landlord's agent marked "refused" by Canada Post. The Supreme Court of British Columbia has held that a party cannot avoid service by refusing to pick up their registered mail. Section 90 of the *Act* provides that registered mail is deemed to be received five days after it was mailed. Accordingly I find the Tenant was sufficiently served notice of this proceeding as of April 10, 2012.

The Landlords and their Agent appeared at the teleconference hearing and gave affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me. No one appeared on behalf of the Tenant despite him being served notice of this proceeding in accordance with the *Act*.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order as a result of that breach, pursuant to sections 55 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlords affirmed they entered into a written tenancy agreement with the Tenant for a one year fixed term lease that began on May 15, 2011. They noted that when they met with the Tenant to sign the tenancy agreement they gave him two copies to initial on some of the pages and sign on the final page however the copy that was returned to them was initialled by the Tenant in several places but not signed on the last page.

The tenancy agreement required payment of rent on the first of each month in the amount of \$1,750.00 and on May 4, 2011 the Tenant paid \$875.00 for the security deposit plus \$875.00 as half of May 2011 rent.

The Landlords advised the tenancy was for the Tenant and his family and there were no provisions to allow the Tenant to sublet the unit. On January 27, 2012 the Landlords were in town and called the Tenant to try and collect the balance owing for December 2011 rent of \$1,000.00 plus the outstanding rent for January 2012 of \$1,750.00. It was during that conversation the Tenant informed the Landlords he was residing elsewhere and he had sublet the unit to other occupants.

The Landlords confirmed they have since entered into tenancy agreement with the people who had been occupying the unit and the new tenancy began effective February 1, 2012 as this is when the occupants began paying rent directly to the Landlords. They enlisted the assistance of the Agent as of March 12, 2012 and are now seeking to recover possession of the unit from their previous Tenant, who they fear may attend the unit, and to recover the unpaid rent.

Analysis

I have carefully considered the aforementioned, and the documentary evidence submitted by the Landlords which included among other things, a copy of the tenancy agreement, emails between the parties, and a 10 Day Notice to end tenancy for unpaid rent.

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlords and corroborated by their Agent and their documentary evidence.

I accept the evidence which supports the Tenant vacated the unit and allowed other people to occupy the unit for some time prior to and continuing up to January 31, 2012, without the written consent of the Landlords.

In this case I find that the evidence supports that the Tenant has entered into either a verbal or written tenancy agreement with the other people making the Tenant their landlord and them his tenants. This means that for the purpose of this dispute the other people occupying the unit, up until January 31, 2012, were occupants to the Landlords named in this dispute. The *Residential Tenancy Act* does not govern occupants and the Landlords must deal with their Tenant in relation to the rental property.

Based on the Landlords' undisputed evidence I find the Landlords entered into a tenancy agreement with the new occupants effective February 1, 2012, the date when the occupants began paying rent directly to the Landlords. I further find the Tenant, who is the named respondent to this dispute, to be responsible for his tenancy agreement and the rental unit up to January 31, 2012.

As the Landlord has regained possession of the unit and re-rented it effective February 1, 2012 I find the Landlord is not entitled to an Order of Possession of the unit. Therefore I dismiss their claim for an Order of Possession. If the Landlords are concerned the Tenant will return to the unit they are at liberty to change the locks providing they give the new Tenants keys to the unit.

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

The Landlord claims for unpaid rent of \$1,000.00 for December 2011 plus \$1,750.00 for January 2012. As noted above this tenancy ended January 31, 2012, in accordance with the *Act*. Pursuant to section 26 of the *Act* a tenant must pay rent when it is due in accordance with the tenancy agreement.

Based on the aforementioned, I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the Landlords have met the burden of proof and I award them a monetary claim of **\$2,750.00** for accumulated unpaid rent.

The Landlords have succeeded with their application; therefore I award recovery of the **\$100.00** filing fee.

Monetary Order – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant’s security deposit plus interest as follows:

Unpaid rent up to January 31, 2012	\$2,750.00
Filing Fee	<u>100.00</u>
SUBTOTAL	\$2,850.00
LESS: Security Deposit \$875.00 + Interest 0.00	<u>-875.00</u>
Offset amount due to the Landlord	<u>\$1,975.00</u>

Conclusion

A copy of the Landlords’ decision will be accompanied by a Monetary Order for **\$1,975.00**. This Order is legally binding and must be served upon the Tenant.

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: April 25, 2012.

Residential Tenancy Branch