



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the *Act*) for orders as follows:

1. an Order of Possession for unpaid rent pursuant to section 55;
2. a monetary order for unpaid rent, utilities and losses arising out of this tenancy pursuant to section 67;
3. an Order to be allowed to keep all or part of the tenants' security deposit pursuant to section 38; and
4. to recover the filing fee from the tenants for the cost of this application pursuant to section 72.

The tenants did not appear although I waited until 9:40 a.m. in order to enable them to connect with this hearing scheduled for 9:30 a.m. The landlord was given full opportunity to be heard, to present evidence, to make submissions and to give affirmed testimony. The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was personally served to an adult who identified himself as the tenants' roommate on April 28, 2012. The landlord's husband gave affirmed testimony that he witnessed the landlord hand the 10 Day Notice to the tenants' adult roommate. The landlord gave affirmed testimony that she sent both tenants a copy of her dispute resolution hearing package by registered mail on May 11, 2012. She provided copies of the Canada Post Tracking Numbers and Customer Receipt to demonstrate these mailings. I am satisfied that the landlord served the above documents to the tenants in accordance with the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary order for unpaid rent and utilities? Can the landlord retain the tenants' security deposit? Is the landlord entitled to recover the filing fee for her application from the tenants?

Background and Evidence

This periodic tenancy commenced on February 1, 2012. Monthly rent is set at \$800.00, payable in advance on the first of each month, plus hydro. The landlord continues to hold the tenants' \$400.00 security deposit paid on or about February 1, 2012.

The landlord issued the 10 Day Notice after the tenants failed to pay \$200.00 of their March 2012 rent and their \$800.00 April 2012 rent. The landlord's application for a monetary award of \$1,856.78 included the following items:

| Item | Amount |
|---------------------------------------|-------------------|
| Unpaid March 2012 Rent | \$200.00 |
| Unpaid April 2012 Rent | 800.00 |
| Unpaid May 2012 Rent | 800.00 |
| February 2012 Utilities | 23.26 |
| March 2012 Utilities | 33.52 |
| Total Monetary Award Requested | \$1,856.78 |

The landlord testified that she has received \$1,200.00 in payments from the tenants' roommate since she issued the 10 Day Notice. She provided written evidence that she accepted these payments from the roommate, who is not listed on the tenancy agreement, for "use and occupancy only" and not to continue this tenancy. She also requested the difference between the \$400.00 received from the roommate as part of the \$1,200.00 in payments received from him and the \$800.00 in rent that was due on June 1, 2012. The landlord also applied for recovery of her \$50.00 filing fee.

The landlord submitted a written Proof of Service Notice prior to the hearing in which her husband confirmed that the landlord served the 10 Day Notice to an adult apparently residing at the rental unit on April 28, 2012. However, as I needed to be satisfied that the landlord had issued the 10 Day Notice in accordance with the *Act*, after the hearing I asked Residential Tenancy Branch (RTB) staff to contact the landlord to obtain a copy of the actual 10 Day Notice served to the tenants. The landlord faxed a copy of the 10 Day Notice later that afternoon after receiving a message from RTB staff requesting a copy of the 10 Day Notice.

Analysis

The tenants failed to pay the outstanding rent in its entirety identified on the 10 Day Notice within five days of being deemed to have been served the 10 Day Notice. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I find that the landlord has demonstrated that she is entitled to a monetary award for unpaid rent and utilities less the amounts accepted by the landlord for use and occupancy only. I allow the landlord to retain the tenants' security deposit plus applicable interest to partially satisfy the monetary award issued in this decision. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover her filing fee from the tenants.

Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour in the following terms which allows the landlord to recover unpaid rent, utilities and her filing fee and to retain the tenants' security deposit in partial satisfaction of the monetary award issued:

| Item | Amount |
|---|-------------------|
| Unpaid March 2012 Rent | \$200.00 |
| Unpaid April 2012 Rent | 800.00 |
| Unpaid May 2012 Rent | 800.00 |
| Unpaid June 2012 Rent | 800.00 |
| Less Payments Received for Use and Occupancy Only | -1,200.00 |
| February 2012 Utilities | 23.26 |
| March 2012 Utilities | 33.52 |
| Less Security Deposit | -400.00 |
| Filing Fee | 50.00 |
| Total Monetary Order | \$1,106.78 |

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: June 06, 2012

Residential Tenancy Branch