



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 9:43 a.m. in order to enable them to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord and her agent who has assisted her with this tenancy attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord gave sworn oral and written evidence that she posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), a copy of which was entered into written evidence, on the tenants' door on May 10, 2012. The landlord's agent confirmed that he witnessed her post this Notice on the tenants' door on that date. The landlord testified that she handed both tenants a copy of her dispute resolution hearing package on May 28, 2012. The landlord's agent testified that he witnessed her hand this package to the tenants. I am satisfied that the landlord served the above documents to the tenants in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord and her agent testified that this six-month fixed term tenancy commenced on April 5, 2012, although the tenants moved into the rental unit in late March 2012. Monthly rent is set at \$900.00, payable in advance on the first of each month. Although the residential tenancy agreement entered into written evidence by the landlord required

the tenants' payment of a \$450.00 security deposit, the landlord and her agent testified that the tenants have only paid \$250.00 towards that deposit on or about April 23, 2012.

The landlord's application for a monetary award of \$2,050.00 included the following items:

Item	Amount
Unpaid April 2012 Rent	\$900.00
Unpaid May 2012 Rent	900.00
Unpaid Portion of Tenants' Security Deposit	200.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order Requested	\$2,050.00

At the hearing, the landlord's agent requested permission to modify the amount of the monetary Order requested to \$2,950.00, to reflect the tenants' non-payment of rent for June 2012. Under the circumstances, I allowed the landlord to increase the amount of the requested monetary Order by \$900.00 to include an award for unpaid rent for June 2012.

Analysis

The tenants failed to pay the amount of unpaid rent identified as owing in the 10 Day Notice in full within five days of receiving the 10 Day Notice. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have received 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 corrected effective date of the notice. In this case, this required the tenants to vacate the premises by May 23, 2012. 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.

Based on the undisputed evidence before me, I find that the landlord has established her entitlement to a monetary award of \$2,700.00 for the unpaid rent owed to her for April, May and June 2012. As stated at the hearing, I find that the landlord is not entitled to a monetary award for the unpaid portion of the tenants' security deposit.

Although the landlord's application does not seek to retain the paid portion of the tenants' security deposit, using the offsetting provisions of section 72 of the *Act*, I allow

the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period. As the landlord has been successful in this application, I allow her 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 under the following terms which allows the landlord to recover unpaid rent and her filing fee and to retain the security deposit paid by the tenants:

Item	Amount
Unpaid April 2012 Rent	\$900.00
Unpaid May 2012 Rent	900.00
Unpaid June 2012 Rent	900.00
Less Security Deposit	-250.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$2,500.00

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 18, 2012

Residential Tenancy Branch