



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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 pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:15 a.m. in order to enable them to connect with this teleconference hearing scheduled for 11:00 a.m. The landlords attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The female landlord testified that she handed the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the female tenant on May 17, 2012. The male landlord testified that he witnessed the female landlord, his wife, hand this Notice to the female tenant. The male landlord also testified that he sent the tenants another copy of the 10 Day Notice by registered mail on May 17, 2012. He provided the Canada Post Tracking Number to confirm this mailing. I am satisfied that the landlords served the tenants with the 10 Day Notice in accordance with section 89(2) of the *Act*.

The female landlord testified that she handed the female tenant a copy of the landlords' dispute resolution hearing package on May 28, 2012. The male landlord testified that he witnessed his wife give this package to the female tenant on that day. The female landlord testified that she tried to hand the female tenant a copy of their amended dispute resolution hearing package, which included their request for an increased monetary award to reflect the tenants' failure to pay their June 2012 rent. She said that the female tenant refused to take the amended package from her and closed the door to the rental unit. The female landlord testified that she placed the amended notice through the tenant's mailbox with the female tenant on the other side of the door. The male landlord confirmed that he witnessed this chain of events regarding the service of the landlords' amended application for dispute resolution. I am satisfied that the landlords served the female tenant with the landlords' original and amended dispute

resolution hearing packages in accordance with section 89(1) of the *Act*. As noted at the hearing, I am not satisfied that the landlords have served the male tenant, the female tenant's son, with a copy of their dispute resolution hearing package. Consequently, I advised the landlords that I can only consider the landlords' request for a monetary award against the female tenant and not the male tenant.

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 against the female tenant for unpaid rent? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the female tenant?

Background and Evidence

This periodic tenancy commenced on January 1, 2012. Monthly rent is set at \$1,375.00, payable in advance on the first of each month, plus heat and hydro. The landlords continued to hold a security deposit of \$685.00 for this tenancy. Of this amount, \$325.00 was paid on January 1, 2012, \$25.00 was paid on February 1, 2012, and \$335.00 was paid on May 1, 2012.

The landlords testified that by April 2012, they had learned that the tenants had allowed the female tenant's older son and his entire family to take up residence in the rental unit, without the landlord's authorization. Since the landlords were experiencing much higher utility costs as a result of the additional occupants, the landlords testified that the parties made an oral agreement whereby the tenants would pay an additional \$50.00 each month while the additional occupants remained there. Although the landlords asked that the additional occupants leave the premises as soon as possible, the landlords testified that they remained in the rental unit for May and June 2012. They testified that monthly rent for those months was increased to \$1,425.00 as per the oral agreement by the parties.

The landlords testified that the male tenant paid \$600.00 at the beginning of May 2012. They applied \$335.00 of this payment toward the remaining portion of the tenants' security deposit. They applied the remaining \$265.00 of this payment towards the \$1,425.00 rent owing for May 2012. The landlords issued their 10 Day Notice for the remaining \$1,160.00 in rent owing for May 2012. They testified that the tenants have not made any further payments during this tenancy.

The landlords' amended application for dispute resolution added \$1,425.00 to the \$1,160.00 they were previously seeking for a total of \$2,585.00. They also sought the recovery of their \$50.00 filing fee.

Analysis

The tenants failed to pay the amount identified as unpaid rent in the 10 Day Notice 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 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. In this case, this required the tenants to vacate the premises by May 28, 2012. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlords 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 landlords may enforce this Order in the Supreme Court of British Columbia.

Based on the undisputed evidence before me, I find that the landlords are entitled to a monetary award of \$1,160.00 for unpaid rent for May 2012 and \$1,425.00 for June 2012. As the landlords have been successful in their application, I also find that they are entitled to recover their filing fee.

I allow the landlords' application to retain the tenants' security deposit plus applicable interest in partial payment of the monetary award issued in this decision. No interest is payable.

Conclusion

I provide the landlords with a formal copy of an Order of Possession to take effect within 2 days of the landlords' 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 landlords' favour against only the female tenant as she was the only tenant who was served with notice of the landlords' application for a monetary Order pursuant to section 89(1) of the *Act*. The monetary Order is set out in the following terms which allow the landlords to recover unpaid rent and their filing fee and to retain the tenants' security deposit:

Item	Amount
Outstanding Rent from May 2012	\$1,160.00
Unpaid June 2012 Rent	1,425.00
Less Security Deposit	-685.00
Recovery of Filing Fee	50.00
Total Monetary Order	\$1,950.00

The landlords are provided with these Orders in the above terms and the female tenant must be served with a copy of these Orders as soon as possible. Should the female tenant 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