



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, 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 and for cause 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 the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1:44 p.m. in order to enable them to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord's agent (the agent) attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The agent testified that she posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenants' door on October 6, 2012. She also testified that she posted the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on the tenants' door on September 28, 2012. She testified that copies of the landlord's dispute resolution hearing package were sent to both tenants by registered mail on October 19, 2012. She provided the Canada Post Tracking Numbers to confirm these mailings. 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 or for cause? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This one-year fixed term tenancy commenced on May 1, 2012. Monthly rent is set at \$2,200.00, payable in advance on the first of each month, plus utilities. The landlord continues to hold the tenants' \$1,100.00 security deposit paid on May 2, 2012.

The landlord did not enter into written evidence a copy of the 10 Day Notice. As such, the landlord's application for an end to this tenancy and an Order of Possession narrows to the claim on the landlord's 1 Month Notice that the tenants were repeatedly late in paying their rent.

The agent testified that the tenants have established a recurring pattern of late payments of their rent during this tenancy. She provided copies of NSF payments from the tenants for July, August, September and October 2012. She testified that the tenants did not pay all of their monthly rent for:

- June 2012 until July 29 or 30, 2012;
- July 2012 until August 29, 2012;
- August 2012 until September 15, 2012;
- September 2012 until October 16, 2012;
- October 2012 until October 16, 2012; and
- November 2012 remains outstanding.

The landlord's application for a monetary award of \$2,200.00 was for unpaid rent. The agent entered oral and written evidence that the landlord accepted a \$3,200.00 payment from the tenants on October 16, 2012 and an \$1,100.00 payment from the tenants on November 7, 2012. Both of the receipts for these payments noted that the payments were accepted for use and occupancy only and not to continue this tenancy. The agent testified that \$1,100.00 in rent remains outstanding for November 2012.

Analysis

Residential Tenancy Policy Guideline #38 provides the following guidance regarding the circumstances whereby a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions...

The evidence presented indicates that the tenants have been late in paying their rent on at least three occasions.

Based on the landlord's undisputed evidence, I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause. The tenants have not made application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the tenants' failure to take this action within ten days led to the end of this tenancy for cause on the effective date of the notice. In this case, this required the tenants to

vacate the premises by October 31, 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. Since this tenancy ends on the basis of the 1 Month Notice, there is no need to consider the landlord's application to end this tenancy on the basis of the 10 Day Notice.

Based on the landlord's undisputed evidence, I find that the tenants continue to owe \$1,100.00 in rent as of the date of this hearing. I issue a monetary award in the landlord's favour in the amount of \$1,100.00 for unpaid rent.

I allow the landlord to retain the tenants' security deposit plus applicable interest in satisfaction of the monetary award issued in the landlord's favour. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant.

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 allow the landlord a monetary award of \$1,100.00 for unpaid rent, which is obtained by way of my order that the landlord retain the tenants' security deposit. I issue a monetary Order in the landlord's favour in the amount of \$50.00 to allow the landlord to recover the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the 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: November 21, 2012

Residential Tenancy Branch

