



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the landlord to obtain an order of possession for unpaid rent, a monetary order for unpaid rent, to keep all or part of the security deposit, and to recover the cost of the filing fee.

The tenants and two agents for the landlord (the “agents”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The female tenant testified that the tenants received a package from the landlord via registered mail. I find the tenants were served in accordance with the *Act*.

Preliminary and Procedural Matters

The agents stated that since filing their application, the tenants failed to pay rent for December 2012 in the amount of \$1,425.00 and requested to increase their monetary claim from \$1,450.00 to \$2,900.00 comprised of an additional \$1,425.00 for unpaid December 2012 rent, and the related \$25.00 late fee pursuant to section 10 of the tenancy agreement. The request of the agents to include unpaid rent for December 2012 and the \$25.00 late fee was granted as the tenants confirmed that they understood rent was due on the first day of each month and continue to occupy the rental unit. The amendment does not prejudice the tenants as the tenants were aware rent was due on the first day of each month and confirmed the existence of the late fee in section 10 of the tenancy agreement.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent under the *Act*?
- Is the landlord entitled to a monetary order for unpaid rent under the *Act*?

Background and Evidence

The parties agree that the tenancy began on July 15, 2009. Monthly rent of \$1,400.00 was due on the first day of each month and was increased to \$1,425.00 during the course of the tenancy. The tenants paid a security deposit of \$700.00 at the start of the tenancy.

The female tenant confirmed that she was personally served with a 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") on November 5, 2012. The agents stated that the 10 Day Notice dated November 5, 2012 and served the same date in person was for \$1,450.00 comprised of \$1,425.00 for unpaid rent for November 2012, and a \$25.00 late fee pursuant to section 10 of the tenancy agreement. The tenants confirmed that they did not dispute the 10 Day Notice or pay the rent due within 5 days of being served with the 10 Day Notice. The effective vacancy date on the 10 Day Notice indicates November 15, 2012.

The tenants testified that December 2012 rent of \$1,425.00 was also not paid due to financial difficulties. The agents are seeking the \$25.00 late fee for December 2012 also for a total monetary claim of \$2,900.00, in addition to the filing fee of \$50.00. The tenants continue to occupy the rental unit.

The agents testified that they would be willing to have the order of possession effective December 31, 2012 at 1:00 p.m. The tenants appeared to appreciate this gesture by the agents.

Analysis

Order of Possession - I find that the tenants failed to pay the rent or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice, and that the tenants are conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ends on the effective vacancy date of the 10 Day Notice. Accordingly, **I grant** the landlord an order of possession effective **December 31, 2012 at 1:00 p.m.** This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

Claim for unpaid rent – The tenants agreed that rent in the amount of \$1,425.00 remains unpaid for the months of November and December 2012. 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 above, I find that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the

first of each month. The tenants continue to occupy the unit. The landlord will not regain possession of the unit until after service of the order of possession and has therefore suffered a loss. The tenants also acknowledged their understanding of the late fees pursuant to section 10 of the tenancy agreement in the amount of \$25.00 for the months of November and December 2012.

I find the landlord has met the burden of proof and has established a monetary claim of **\$2,900.00** comprised of \$1,425.00 in unpaid rent for November 2012 and a late fee of \$25.00, \$1,425.00 in unpaid rent for December 2012 and a late fee of \$25.00.

As the landlord has succeeded with their application, **I grant** the landlord the recovery of the **\$50.00** filing fee.

As the landlord has not claimed towards the security deposit, the security deposit will not be addressed in this decision.

Monetary Order – I find that the landlord has established a monetary claim as follows:

Unpaid November 2012 rent	\$1,425.00
Unpaid December 2012 rent	\$1,425.00
November 2012 late fee	\$25.00
December 2012 late fee	\$25.00
Filing fee	\$50.00
TOTAL OWING TO LANDLORD	\$2,950.00

Therefore, I grant the landlord a monetary order pursuant to section 67 of the *Act* in the amount of \$2,950.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the landlord has proven their claim and is, therefore, entitled to an order of possession effective December 31, 2012 at 1:00 p.m. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

I find that the landlord has established a total monetary claim of \$2,950.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 20, 2012

Residential Tenancy Branch