



Dispute Resolution Services

Page: 1

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 or utilities, a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

An agent for the landlord (the “agent”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was 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.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”) was considered. The agent testified that the tenants were served the Notice of Hearing on November 23, 2012 by registered mail sent to the rental unit address and in the tenants’ name. The agent provided a registered mail tracking number in evidence. Based on the undisputed testimony of the agent, I find the tenant was served in accordance with the *Act* on the fifth day after the registered mailing date, pursuant to section 90 of the *Act*.

Preliminary and Procedural Matter

The agent stated that since filing their application, the tenants have failed to pay December 2012 rent in the amount of \$835.00 and has incurred an NSF fee in the amount of \$25.00. The agent requested to amend their claim from \$860.00 to \$1,720.00 comprised of \$835.00 rent owing for the months of November and December 2012, an two \$25.00 NSF fees for the months of November and December 2012. The tenants continue to occupy the rental unit. Therefore, I allow the landlord to amend their monetary request to \$1,720.00 as it is reasonable that the tenants would be aware that rent is due in accordance with the tenancy agreement and given that the tenants continues to occupy the rental unit.

Issues to be Decided

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

Background and Evidence

The agent testified that a fixed term tenancy agreement began on December 1, 2011 and reverted to a month to month tenancy on November 30, 2012. Monthly rent in the amount of \$835.00 was due on the first day of each month. A security deposit of \$417.50 was paid by the tenants at the start of the tenancy.

The agent confirmed service of the 10 Day Notice for Unpaid Rent or Utilities (the “10 Day Notice”), by posting on the tenants’ door on November 13, 2012. The landlord submitted the 10 Day Notice in evidence. Pursuant to section 90 of the *Act*, the tenants were deemed served 3 days later on November 16, 2012. The effective vacancy date on the 10 Day Notice is listed as November 26, 2012. The tenants did not pay rent or dispute the 10 Day Notice within 5 days of the deemed service date of November 16, 2012.

The agent testified that the tenants owe \$1,720.00 comprised of \$835.00 for unpaid rent for November 2012, \$835.00 for unpaid rent for December 2012, and two \$25.00 NSF fees for the months of November 2012 and December 2012. The landlord is also seeking the recovery of the filing fee.

Analysis

Based on the documentary evidence and the undisputed oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

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 ended on the effective vacancy date on the 10 Day Notice listed as November 26, 2012. Accordingly, **I grant** the landlord an order of possession. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

Claim for unpaid rent – The agent testified that \$835.00 remains unpaid for November 2012 rent, and \$835.00 is owing for December 2012 rent, and two \$25.00 NSF fees for those months. Pursuant to section 26 of the *Act* tenants 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.

I find the landlord has met the burden of proof and has established a monetary claim of **\$1,720.00** comprised of \$835.00 in unpaid rent for November 2012 and \$835.00 for December 2012 unpaid rent, plus the two NSF fees of \$25.00 each for the months of November and December 2012.

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

The tenants' security deposit of \$417.50 has accrued zero interest since the start of the tenancy. The landlord verbally requested that they would like to retain the security deposit towards the unpaid rent owed by the tenants.

Monetary Order – I find that the landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit plus interest as follows:

Unpaid November 2012 rent	\$835.00
Unpaid December 2012 rent	\$835.00
November 2012 NSF fee	\$25.00
December 2012 NSF fee	\$25.00
Filing fee	\$50.00
Subtotal	\$1,770.00
<i>(Less Security Deposit with interest)</i>	<i>(\$417.50)</i>
TOTAL OWING TO LANDLORD	\$1,352.50

Conclusion

I find that the landlord has proven their claim and is, therefore, entitled to an order of possession effective **two days** after service upon the tenants. 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 \$1,770.00. I authorize the landlord to retain the full security deposit of \$417.50 in partial satisfaction of the claim, and I grant the landlord a monetary order under section 67 for the balance due of **\$1,352.50**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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 27, 2012.

Residential Tenancy Branch