



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPC MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on December 11, 2012, by the Landlord to obtain Orders of Possession for cause and unpaid rent; and for a Monetary Order for: unpaid rent or utilities; to keep all or part of the pet and or security deposits; for money owed or compensation for damage or loss under the Act regulation, or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The Landlord appeared at the teleconference hearing and affirmed that each Tenant was served copies of their application, evidence, and the Notice of Hearing documents by registered mail on December 14, 2012. Canada Post tracking information was provided in the Landlord's oral testimony. The Landlord stated that when they were cleaning up the rental unit they found the delivery notice cards inside the rental unit so the Tenants had received them and simply refused to pick up the registered mail.

Case law provides that refusal to pick up registered mail does not negate or avoid service. Therefore, I find the Tenants were sufficiently served notice of this proceeding and I continued in the Tenants' absence.

Issue(s) to be Decided

1. Should the Landlord be granted an Order of Possession?
2. Should the Landlord be awarded a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: a 1 Month Notice to end tenancy for cause; the tenancy agreement; a notice to vacate; two warning letters dated September 4, 2012 and September 18, 2012; and a tenant payment ledger.

The tenancy agreement provides that the parties entered into a fixed term tenancy agreement that began on September 1, 2012 and is scheduled to end on February 28, 2013. Rent was payable on the first of each month in the amount of \$1,650.00 and a security deposit of \$825.00 plus a pet deposit of \$825.00 were required to be paid. The Landlord confirmed that the \$825.00 security deposit was paid August 27, 2012. They

also received \$275.00 cash towards the pet deposit which they later returned to the Tenants.

The Landlord advised that the Tenants vacated the rental property on December 31, 2012. They have regained possession of the rental unit; therefore, they are withdrawing their request for Orders of Possession.

The Landlord submitted that she had scheduled a move out inspection for 1:00 p.m. on December 31, 2012, and when she attended the Tenants had not finished moving out. She returned approximately 1 ½ hours later to conduct the inspection and the Tenants were gone. No one attended the move out inspection on behalf of the Tenants.

The Landlord is seeking \$1,650.00 for unpaid rent for December 2012, plus \$500.00 for liquidated damages as provided for in section 26 of the tenancy agreement. The Landlord advised that the liquidated damages charge was to cover their costs for having to re-rent the unit prior to the end of the fixed term lease which included their time to show the suite and for any future costs for advertising. She acknowledged that they are currently advertising on the free internet sites; however, they have not re-rented the unit so they would have to possibly pay to advertise if they cannot get it rented soon.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenants who did not appear at this proceeding, I accept the version of events as discussed by the Landlord and corroborated by their documentary evidence.

The Landlord submitted a tenant payment ledger which references charges and payments of rent. This ledger supports the Landlord's submission that rent was not paid for December 2012 even though the Tenants had possession of the unit until December 31, 2012. Failure to pay rent when it is due in accordance with the tenancy agreement is a breach of section 26 of the Act. Accordingly, I award the Landlord unpaid December 1, 2012 rent in the amount of **\$1,650.00**.

The Landlord has sought \$500.00 in liquidated damages as provided for in section 26 of the tenancy agreement.

A liquidated damages clause is a clause in a tenancy agreement where the parties agree, in advance, the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into. I accept the Landlord's testimony that \$500.00 is a reasonable amount as they have had to pay wages to ready the unit for showing and to attend the unit to show prospective tenants. Accordingly, I approve their claim for liquidated damages in the amount of **\$500.00**.

The Landlord has been successful with their application; therefore, I award recovery of the **\$50.00** filing fee.

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 Rent December 1, 2012	\$1,650.00
Liquidated Damages	500.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,200.00
LESS: Security Deposit \$825.00 + Interest 0.00	<u>-825.00</u>
Offset amount due to the Landlord	<u>\$1,375.00</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$1,375.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order 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: January 16, 2013

Residential Tenancy Branch

