



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 the landlords' 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 tenant's 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 tenant 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 and his agent (the agent) attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The agent entered sworn oral and witnessed written evidence in which she asserted that she handed the female tenant the 10 Day Notice on November 4, 2012. The agent entered written evidence that copies of the landlords' dispute resolution hearing package were sent to the tenants by registered mail on November 30, 2012. The agent entered written evidence of Canada Post Tracking Numbers and Customer Receipts to confirm these registered mailings. I am satisfied that the landlords served the above documents to the tenants in accordance with the *Act*.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This six-month fixed term tenancy commenced on September 1, 2012. Monthly rent is set at \$1,000.00, payable in advance on the first of each month. The landlords continue to hold the tenant's \$500.00 security deposit and \$500.00 pet damage deposit, paid on August 30, 2012.

The landlords issued the 10 Day Notice for \$1,000.00 of unpaid rent for November 2012. The agent testified that the tenant paid \$1,000.00 on November 14, 2012, accepted by the agent for "use and occupancy only," as was noted on the copy of the receipt entered into written evidence by the agent. The agent also testified that she accepted a cheque for \$1,000.00 for use and occupancy only on December 4, 2012, applied to the amount that became owing on December 1, 2012. She testified that she continues to hold a \$300.00 certified cheque provided by the tenant for the amount that became owing on January 1, 2013. The landlord and the agent requested an Order of Possession based on the tenant's failure to pay all rent owing within five days of receiving the 10 Day Notice.

Analysis

I find that the agent's acceptance of payments from the tenant for use and occupancy only has not set aside the 10 Day Notice or continued this tenancy. The tenant failed to pay the November 2012 rent in full within five days of receiving the 10 Day Notice. The tenant has 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 tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by November 16, 2012. As that has not occurred, I find that the landlords are 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. If the tenant does 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 \$700.00 remains owing for this tenancy at present. I order the landlords to negotiate the \$300.00 certified cheque in the agent's possession in partial payment of the \$1,000.00 that became due on January 1, 2013. I issue a monetary award in the landlords' favour in the amount of \$700.00 for unpaid rent. As the landlords were successful in this application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for this application from the tenant.

Although the landlord's application does not seek to retain the tenant's pet damage and security deposits, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the \$500.00 security deposit plus applicable interest and \$250.00 from the tenant's pet damage deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period.

Conclusion

I provide the landlord 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. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlords to negotiate the \$300.00 certified cheque currently in the agent's possession. I order the landlords to retain the tenant's \$500.00 security deposit and \$250.00 from the tenant's security deposit to satisfy the monetary awards issued in the landlords' favour for unpaid rent and recovery of their filing fee. I find that the remaining portion of the tenant's pet damage deposit held by the landlord for this tenancy is now set at \$250.00.

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 08, 2013

Residential Tenancy Branch