



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR OPB MNR MNSD MNDC FF O

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession based on unpaid rent and for breaching the tenancy agreement, for a monetary order for unpaid rent, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, authorization to retain the security deposit, to recover the filing fee, and "other" although details of "other" were not provided in the details of the application.

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 hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice") was considered. The agent testified that the Notice was served on the tenants by registered mail, each with their own package, on February 5, 2013. The agent provided two registered mail receipts with tracking number as evidence and confirmed that the name and address matched the name of the tenants and the address of the rental unit. The agent stated that the tenants continue to reside at the rental unit. Section 90 of the *Act* states that documents served by registered mail are deemed served five days after they are mailed. I find the tenants were duly served on the fifth day after mailing, in accordance with the *Act*, which would be February 10, 2013.

Preliminary and Procedural Matters

The agent requested to amend their monetary claim from \$10,450.00 down to \$5,450.00 which was permitted as such an amendment does not prejudice the tenants. The agent also requested to withdraw their \$350.00 claim for landscaping fees. As a

result, the landlord is at liberty to reapply for the landscaping fees; however, withdrawing that portion of their claim does not extend any time limits under the *Act*.

As a result of the above, the landlord's net monetary claim is for \$5,100.00 comprised of \$5,000.00 in unpaid rent, \$50.00 in NSF fees, and \$50.00 for late fees.

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*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

Documentary evidence submitted indicates that a fixed term tenancy began on October 1, 2012 and was set to expire on September 30, 2013. Monthly rent in the amount of \$5,000.00 is due on the first day of each month. The tenants paid a security deposit of \$2,500.00 at the start of the tenancy.

Section 2.1 of the tenancy agreement references a \$25.00 charge for each cheque returned as NSF (non-sufficient funds) and a \$25.00 for late fee for each rent cheque not delivered to the landlord by the first of each and every month of the lease.

The agent stated that the tenants paid January 2013 rent late on February 2, 2013, and failed to pay any rent for February 2013 and therefore owe \$5,000.00 in unpaid rent. The agent stated that the two \$25.00 NSF fees are for cheques returned as insufficient funds for the months of November 2012 and January 2013. The agent testified that the two \$25.00 late fees are for the months of November 2012 which was paid late on December 3, 2012, and January 2013 which was paid late on February 2, 2013.

The agent confirmed service of the 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") dated January 17, 2013, by posting on the tenants' door on January 17, 2013 which was witnessed by the agent and with an effective vacancy date of January 27, 2013. The agent stated that the tenants did not dispute the 10 Day Notice or pay the required rent within five days of being served the 10 Day Notice.

The landlord provided a ledger, 10 Day Notice, Proof of Service of the 10 Day Notice, tenancy agreement, and registered mail receipts in evidence for this proceeding.

Analysis

Based on the documentary evidence and the undisputed 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. The effective date of the Notice automatically corrects under the *Act* to January 30, 2013 as the 10 Day Notice was posted to the tenants' door on January 17, 2013. Section 90 of the *Act* states that documents posted to the door of the tenants are deemed served three days later which would be January 20, 2013. **I find** the tenants are conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the corrected effective date of the Notice, January 30, 2013. The tenants continue to occupy the rental unit. Therefore, **I grant** the landlord an order of possession effective **2 days** after service on the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

Claim for unpaid rent, NSF fees and late fees – The agent testified that the tenants paid January 2013 rent late on February 2, 2013 and have failed to pay February 2013 rent in the amount of \$5,000.00. 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. Therefore, **I find** the landlord has met the burden of proof and is entitled to compensation for unpaid rent for February 2013 in the amount of **\$5,000.00**.

The agent testified that the tenants were charged two \$25.00 NSF fees for two cheques returns as insufficient funds in November 2012 and January 2013 for a total of \$50.00 in NSF fees. The agent stated that the tenants were also charged two \$25.00 late fees for the months of November 2012 and January 2013 for a total of \$50.00 in late fees. The November 2012 rent payment was received late on December 3, 2012, and the January 2013 rent payment was received late on February 2, 2013. The tenancy agreement submitted in evidence supported both of these types of charges. **I find** that the landlord has met the burden of proof and is entitled to compensation of **\$100.00** comprised of two \$25.00 NSF fees, and two \$25.00 late fees.

The landlord is holding a security deposit of \$2,500.00 which was paid by the tenants at the start of the tenancy and which has accrued \$0.00 in interest.

As the landlord has succeeded with their application, I **grant** the landlord recovery of their **\$100.00** filing fee.

Monetary Order – I find that the landlord is entitled to a monetary order 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 February 2013 rent	\$5,000.00
Two NSF fees (\$25.00 each)	\$50.00
Two late fees (\$25.00 each)	\$50.00
Filing fee	\$100.00
Subtotal	\$5,200.00
<i>(Less tenants' security deposit which has accrued \$0.00 interest)</i>	<i>-(\$2,500.00)</i>
TOTAL OWING TO THE LANDLORD	\$2,700.00

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 **\$5,200.00**. I **authorize** the landlord to retain the tenants' full security deposit of \$2,500.00 in partial satisfaction of the claim. I grant the landlord a monetary order under section 67 for the balance due of **\$2,700.00**. 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: February 28, 2013

Residential Tenancy Branch

