



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Eviction Services
Regent Park Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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 and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. Landlord VES (the landlord) submitted written evidence that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was handed to the male tenant by VES representative SM at 4:44 p.m. on January 9, 2013. I am satisfied that the landlords served the 10 Day Notice to the tenants in accordance with the *Act*.

The landlord entered written evidence that copies of the landlords' dispute resolution hearing package were sent to both tenants by registered mail on January 26, 2013. The landlord provided the Canada Post Tracking Number regarding these registered mailings. The female tenant (the tenant) said that neither tenant was able to retrieve the landlords' registered mailing because they do not have adequate identification. However, she confirmed that the landlord told her about this hearing a few days earlier when the landlord called her to discuss this application and she realized that the landlord was seeking a monetary award and an Order of Possession. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed to have been

served with copies of the landlords' dispute resolution hearing package on January 31, 2013, the fifth day after their registered mailing.

At the commencement of the hearing, the parties clarified that the correct spelling of the female tenant's first name is as appears above and not that which appeared on the original application for dispute resolution. With the agreement of both parties in attendance, the landlord requested authorization to correct the spelling of the female tenant's name to that which appears above.

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 and losses arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This one-year fixed term tenancy commencing on August 15, 2012 is scheduled to end on August 31, 2013. Monthly rent is set at \$1,600.00, payable in advance on the first of each month, plus utilities. The landlords continue to hold the tenants' \$800.00 security deposit paid on August 15, 2013.

The landlords' application for a monetary award of \$9,325.00 included the following:

Item	Amount
Outstanding Rent Owing for September 2012	\$1,125.00
Unpaid October 2012 Rent	1,800.00
Unpaid November 2012 Rent	1,800.00
Unpaid December 2012 Rent	1,800.00
Unpaid January 2013 Rent	1,800.00
Loss of Rent for February 2013	1,800.00
Recovery of Filing Fee for this application	100.00
Total of Above Items	\$10,225.00

At the hearing, the landlord reduced the requested monthly amount owing from October 2012 until February 2012 by \$200.00 per month, reflecting that the correct monthly rent is set at \$1,600.00. This reduced the amount of the landlords' requested monetary award by \$1,000.00 to the overall amount of \$9,225.00 cited in the landlords' application for dispute resolution (plus the \$100.00 filing fee).

The tenant confirmed that she intended to vacate the premises soon but could not do so until she had possession of another rental unit that was to become vacant. The tenant also said that the Ministry of Social Development (the Ministry) has been paying shelter allowance payments of \$375.00 each month to the landlord from September 2012 until January 2013. She provided no written evidence to support this assertion. The landlord testified that no such payments have been received on the tenant's behalf from the Ministry over this period. The landlord testified that the last payment received from this tenancy was a \$475.00 payment provided by the Ministry on September 7, 2012. This payment reduced the amount of the landlords' requested monetary award for September 2012 from \$1,600.00 to \$1,125.00.

The tenant also said that there was an oral agreement between the landlord and the male tenant whereby he was to undertake work for the landlord in exchange for a reduction in monthly rent. The tenant confirmed that there was no written addendum and that the Residential Tenancy Agreement (the Agreement) entered into evidence by the landlord was the only written agreement between the parties. This Agreement clearly stated that the monthly rent was set at \$1,600.00 per month.

Analysis

The tenants failed to pay the \$7,525.00 in rent identified as owing in the 10 Day Notice in full within five days of receiving the 10 Day Notice. The tenants have 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 tenants' failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by January 19, 2013. 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(s). If the tenants do 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 a balance of probabilities, I find that the landlords' claim for a monetary award is in line with the terms of the Agreement. The tenant's verbal evidence that an oral agreement existed between parties that were not in attendance at the hearing is not as strong as the written terms of the Agreement. Similarly, without any written evidence from the tenant, I find it more likely than not that the landlord is correct in asserting that no payments have been made towards this tenancy since September 7, 2012. Under these circumstances, I issue a monetary award of \$1,125.00 for unpaid rent owing from September 2012, and \$1,800.00 for each of October 2012, November 2012, December 2012, January 2013 and February 2013.

I allow the landlords to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. As the landlords have been successful in this application, I allow them to recover their filing fee from the tenants.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of the Original Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlords' favour under the following terms, which allows the landlords to recover unpaid rent and their filing fee, and to retain the security deposit from the tenants:

Item	Amount
Outstanding Rent Owing for September 2012	\$1,125.00
Unpaid October 2012 Rent	1,600.00
Unpaid November 2012 Rent	1,600.00
Unpaid December 2012 Rent	1,600.00
Unpaid January 2013 Rent	1,600.00
Unpaid February 2013 Rent	1,600.00
Less Security Deposit	-800.00
Recovery of Filing Fee for this application	100.00
Total Monetary Order	\$8,425.00

The landlords are provided with these Orders in the above terms and the tenant(s) must be served with an **Original Order** as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: February 19, 2013

Residential Tenancy Branch

