



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sutton Group Medallion Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, MNR, FF

Introduction

This hearing was scheduled in response to the landlord's application for an order of possession / a monetary order as compensation for unpaid rent / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from September 1, 2012 to August 31, 2013. Monthly rent of \$1,700.00 is due and payable in advance on the first day of each month, and a security deposit of \$850.00 was collected.

Arising from rent in the amount of \$1,700.00 which remained unpaid when due on January 1, 2013, the landlord issued a 10 day notice to end tenancy for unpaid rent dated January 4, 2013. The notice was served in-person on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is January 14, 2013. Subsequently, but not within 5 days of having received the 10 day notice, the tenants eventually paid the full amount of rent due for January 2013. However, \$300.00 currently remains overdue for February 2013 and no rent whatsoever has been paid for March 2013. The tenants continue to reside in the unit and wish to reside there until March 31, 2013. The landlord seeks an order of possession to be effective two (2) days after service on the tenants, and will exercise discretion as to when it is served, according to what additional payment of rent may be received from the tenants.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated January 4, 2013. The tenants did not pay the full amount of rent outstanding within 5 days of receiving the notice, and did not apply to dispute the notice. The tenants are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlord has established entitlement to an **order of possession**.

As for compensation, I find that the landlord has established entitlement to a claim of **\$1,200.00**, which is comprised as follows:

\$300.00: *unpaid rent for February*

\$850.00: *unpaid rent for the period from March 1 to 15, 2013 (\$1,700.00 ÷ 2)*

\$50.00: *filing fee*

I find that it is premature to award the landlord compensation for unpaid rent for the period from March 16 to 31, 2013.

Section 72 of the Act addresses **Director's orders: fees and monetary orders**, and provides in part as follows:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Following from all the above, I order that the landlord retain the security deposit of **\$850.00**, and I hereby grant the landlord a **monetary order** under section 67 of the Act for the balance owed of **\$350.00** (\$1,200.00 - \$850.00).

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenants. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$350.00**. Should it be necessary, this order may be served on the tenants, filed in the 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: March 4, 2013

Residential Tenancy Branch

