



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's 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 tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:18 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord and his agent testified that they handed the male tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on March 8, 2013. They also provided a witnessed statement to this effect. The landlord and his agent testified that they sent the tenants a copy of the landlord's dispute resolution hearing package by registered mail on March 15, 2013. They provided copies of the Canada Post Tracking Number to confirm this mailing. The agent testified that Canada Post's records show that the package was successfully delivered on March 21, 2013. I am satisfied that the landlord served the above documents to the tenants in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This periodic tenancy commenced on October 1, 2012. Monthly rent is set at \$1,200.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$600.00 security deposit paid on September 30, 2012.

At the hearing, the landlord's agent noted that the tenants have paid a total of \$800.00 in March 2013 towards this tenancy. However, he testified that \$3,600.00 was due for rent for the months of February, March and April 2013. He testified that the current amount of outstanding rent is \$2,400.00 and requested authorization to amend the application for dispute resolution to reflect this amount of owed rent. I agreed to the landlord's agent's request and amended the amount of the requested monetary award from \$2,000.00 to \$2,400.00.

Analysis

I find that there is undisputed evidence that the tenants failed to pay all of the \$1,200.00 identified as owing in the 10 Day Notice within five days of receiving that 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 corrected effective date of the notice. In this case, this required the tenants to vacate the premises by March 18, 2013. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenant(s) do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I find undisputed evidence that the tenants continue to owe \$2,400.00 in rent for this tenancy. I issue a monetary award in this amount in the landlord's favour.

I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. I allow the landlord to recover his \$50.00 filing fee from the tenants.

Conclusion

I grant an Order of Possession to the landlord effective two days after service of this 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 landlord's favour under the following terms, which allows the landlord to recover unpaid rent and his filing fee and to retain the tenants' security deposit:

Item	Amount
February 2013 Rent	\$1,200.00
March 2013 Rent	1,200.00
Less March 5, 2013 Payment	-400.00
Less March 28, 2013 Payment	-400.00
April 2013 Rent	1,200.00
Less Security Deposit	-600.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$2,250.00

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this 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 final and binding 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: April 11, 2013

Residential Tenancy Branch