



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, MNSD, MND, MNDC, FF

Introduction

This hearing dealt with the landlords' application for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent and breach of an agreement, a monetary order for unpaid rent, damage to the rental unit, and money owed or compensation for damage or loss, for authority to retain the tenants' security deposit and to recover the filing fee.

The parties appeared, after the attending tenant announced her attendance for both tenants, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, no party raised any issue regarding service of the evidence or the application. I note that the only evidence provided was a copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") and proof of registered mail service of the hearing documents to the tenants, provided by the landlords.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue-I concluded that the landlord mismarked her application for dispute resolution, when she asked for an order of possession for the rental unit based upon breach of an agreement, as the evidence showed that the landlord intended only to seek an order of possession for the rental unit based upon unpaid rent.

I also inform the landlord that I have not considered her request for damages to the rental unit due to the fact the tenancy has not yet ended.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit, monetary compensation, authority to retain the tenants' security deposit, and to recover the filing fee?

Background and Evidence

The landlord gave undisputed evidence that this tenancy began on April 1, 2012, monthly rent is \$900, or \$450 for each of the tenants, and a security deposit of \$225 was paid by the tenants at the beginning of the tenancy.

The landlord confirmed that there was no written tenancy agreement.

The landlord gave evidence that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent, by leaving it with the tenants, listing unpaid rent of \$450 as of March 1, 2013. The effective vacancy date listed on the Notice was March 16, 2013.

The landlord said that their property manager at the time delivered the Notice and that they were not sure when the Notice was issued; however, the tenant acknowledged receiving the Notice on March 6, 2013.

The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenants had five days to dispute the Notice.

The landlord testified that the tenants have not made any rent payments since issuance of the Notice, and as of the date of the hearing, the tenants owed a total of \$2250 in unpaid rent through May 2013.

The tenant asked the landlord how she calculated the unpaid rent, with the reply being that rent of \$450 for March, \$900 for April, and \$900 for May was owed.

The tenant then acknowledged owing this amount; however, the tenant further stated that repairs were never performed on the rental unit.

I have no evidence that the tenants filed an application for dispute resolution in dispute of the Notice.

Analysis

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

I find the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent, did not pay the outstanding rent or apply to dispute the Notice within five days of service and

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.

I therefore find that the landlords are entitled to an order of possession for the rental unit effective two days after service of the order upon the tenants.

I also find that the landlords have established a total monetary claim of \$2300 comprised of outstanding rent of \$2250 through May, 2013, and the \$50.00 filing fee paid by the landlords for this application.

Conclusion

I grant the landlords a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

At the landlord's request, I allow the landlord to retain the tenants' security deposit of \$225 in partial satisfaction of their monetary award.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$2075, which I have enclosed with the landlords' Decision.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

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* and is being mailed to both the applicant and the respondents.

Dated: May 09, 2013

Residential Tenancy Branch

