



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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. The landlord and her agent attended and gave affirmed testimony. Despite in-person service of the application for dispute resolution and notice of hearing (the "hearing package") on or about April 19, 2013, neither tenant appeared.

Issue(s) to be Decided

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

Background and Evidence

There is no written tenancy agreement in evidence for this tenancy which began several months ago. Monthly rent of \$700.00 is due and payable in advance on the first day of each month, and a security deposit of \$350.00 was collected.

Pursuant to section 49 of the Act which speaks to **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice to end tenancy dated March 28, 2013. The notice was served in-person on March 31, 2013. A copy of the notice was submitted in evidence. The date shown by when the tenants must vacate the unit is May 31, 2013. The reason shown on the notice in support of its issuance is as follows:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

Thereafter, pursuant to section 46 of the Act which speaks to **Landlord's notice: non-payment of rent**, arising from rent which remained unpaid when due on April 1, 2013, the landlord issued a 10 day notice to end tenancy dated April 2, 2013. The notice was served in-person on that same date. A copy of the notice was submitted in evidence.

The date shown by when the tenants must vacate the unit is April 12, 2013. However, the tenants have paid no more rent and they continue to have possession of the unit.

Analysis

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord and the landlord's agent, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated April 2, 2013. The tenants did not pay the outstanding rent within 5 days of receiving the notice, did not apply to dispute the notice, and they continue to have possession of the unit. 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, which I find is April 12, 2013. Accordingly, I find that the landlord has established entitlement to an **order of possession**.

Section 57 of the Act speaks to **What happens if a tenant does not leave when tenancy ended**, in part as follows:

57(1) In this section:

“overholding tenant” means a tenant who continues to occupy a rental unit after the tenant's tenancy is ended.

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Further, Residential Tenancy Policy Guideline # 3 addresses “Claims for Rent and Damages for Loss of Rent,” in part:

...if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises.

As for the monetary order, following from the above, I find that the landlord has established a claim of **\$1,224.18**, which is comprised as follows:

\$700.00: *unpaid rent for April*

\$474.18: *unpaid rent for the anticipated overholding period from May 1 to 21, calculated as follows:*

$\$700.00$ (monthly rent) \div 31 (# of days in May) = $\$22.58$ (*per diem*)
 $\$22.58$ (*per diem*) \times 21 (anticipated # of overholding days in May)

$\$50.00$: *filing fee*

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

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 **$\$350.00$** , and I grant the landlord a **monetary order** under section 67 of the Act for the balance owed of **$\$874.18$** ($\$1,224.18 - \350.00).

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 **$\$874.18$** . 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: May 14, 2013

Residential Tenancy Branch

