



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNR and FF

Introduction

This hearing was convened on an application made by the landlord on April 18, 2013, amended on April 19, 2013, for an Order of Possession pursuant to a two-month Notice to End Tenancy for landlord use served on January 3, 2013 by mail. The landlord also sought a Monetary Order for unpaid rent dating back to 2010 and recovery of the filing fee for this proceeding.

At the commencement of the hearing, the landlord advised that the tenants had vacated the rental unit on May 5, 2013 and that she no longer required the Order of Possession.

Despite having been served with the Notice of Hearing sent by registered mail on April 19, 2013, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing which proceeded in their absence.

Issue(s) to be Decided

This matter now requires a decision on whether the landlord is entitled to a Monetary Order for the unpaid rent and recovery of the filing fee.

Background and Evidence

According to the landlord, this tenancy began on May 1, 2010. Rent was \$650 per month and there is no security deposit.

During the hearing, the landlord stated that she had served the Notice to End Tenancy as she needed possession of the rental unit for her own use.

The two-month Notice to End Tenancy had set an end of tenancy date of March 31, 2013 but the tenants did not vacate until May 5, 2013 on telephone notice and without providing a forwarding address. The landlord has added one month plus a five-day per diem to her monetary claim for unpaid rent.

The landlord submitted a copy of the tenants' ledger from the beginning of the tenancy showing a rent shortfall of \$2,600 for 2010, \$1350 for 2011, plus all of the rent for 2013 to May 5, 2013 less the one month equivalent granted by section 51 of the *Act* to tenants receiving a notice for landlord use under section 49 of the *Act*.

The landlord stated that the tenants paid all of the rent due in 2012.

The landlord explained that she had not made application for the unpaid rent earlier because the tenants had been recommended to her by a close friend and she had accepted their continuing promises to bring their account up to date.

Analysis

Section 49(3) of the *Act* provides that a landlord may issue a two-month Notice to End Tenancy in circumstances in which "the landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

Section 49(8) of the *Act* provides that a tenants make may an application to contest a Notice to End Tenancy for landlord use within 15 days of receiving it. If the tenants do not make application to contest the notice, section 49(9) of the *Act* states that the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must vacate by that date.

In the present matter, as the tenants did not vacate until five weeks after the end date set by the notice, I find that, while still entitled to the equivalent of one month's rent, they must pay the five day per diem for overholding from May 1 to May 5, 2013.

In the absence of any evidence to the contrary, I find that the landlord is entitled to a Monetary Order to include recovery of the filing fee for this proceeding and for the unpaid rent for 2010, 2011 and 2013 itemized on the tenants' ledger as follows:

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Landlord's claim for unpaid rent		
2010	August	\$ 650.00
	September	650.00
	October	650.00
	December	650.00
2011	January	650.00
	February	50.00
	June	650.00
2013	January	650.00
	February	650.00
	March	650.00
	April	650.00
	May (5 days at \$20.97 per day)	104.85
Filing fee		<u>100.00</u>
Sub total		\$6,754.85
Less equivalent of one month's rent per section 51 of the <i>Act</i>		<u>- 650.00</u>
TOTAL owed to landlord by tenants		\$6,104.85

Conclusion

The landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for service on 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*.

Dated: May 16, 2013

Residential Tenancy Branch

