



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of a conference call in response to an application made by the landlord for an Order of Possession for unpaid rent or utilities and for a monetary order relating to: unpaid rent or utilities, money owed or compensation for damage or loss under the Act; to keep all or part of a security deposit; and to recover the filing fee from the tenant for the cost of this application.

The landlord filed this application on May 16, 2013 and served both tenants separately by registered mail on May 17, 2013 with a copy of the application, Notice of Hearing documents and a copy of the evidence used in this hearing. The Canada Post tracking numbers were provided by the landlord during the hearing and based on this I find that the tenants were deemed to be served the hearing documents and evidence on the fifth day after they were mailed as per the *Residential Tenancy Act*.

The landlord attended the hearing to give affirmed testimony. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Act*. All of the testimony and documentary evidence submitted was carefully considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent and losses incurred under the Act?
- Is the landlord entitled to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that the tenancy started on July 1, 2010 on a month-to-month basis and a security deposit was collected from the tenants in the amount of \$537.50 on June 18, 2010. Rent in the amount of \$1,075.00 was the monthly payment recorded on the written tenancy agreement; however, the landlord testified that the rent was subsidized, leaving \$822.00 payable by the tenants on the 1st day of each month. The tenancy agreement also contained a clause enabling the landlord to charge a \$25.00 administration fee for returned NSF rent cheques.

The landlord provided a transaction ledger and testified that by April 1, 2013 the tenants were in arrears for rent payments that totaled \$1,891.00 as follows:

- \$222.00 for the month of February 2013;
- \$822.00 and a \$25.00 returned cheque charge for the month of March, 2013; and
- \$822.00 for the month of April.

The landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 5, 2013 by posting it to the tenants' door with an expected date of vacancy of April 18, 2013; this was provided as evidence for the hearing. The landlord further testified that since the time of issuing this notice and making the Application for Dispute Resolution, the tenants have failed to pay \$822.00 for the month of May 2013. The landlord also claims loss of rent for June, 2013 in the amount of \$822.00.

As a result, the landlord seeks an Order of Possession for unpaid rent or utilities, and to recover the balance of \$3,535.00 in rent arrears.

The tenants failed to attend the hearing or provide any written submissions prior to this hearing taking place.

Analysis

Section 46(4) and (5) of the *Residential Tenancy Act* states that within five days of a tenant receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a tenant must pay the overdue rent or apply for dispute resolution; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the notice relates.

The *Act* states that documents served by posting to the door are deemed to have been served 3 days after such posting. Therefore, I find that the tenants were deemed to be served the notice on April 8, 2013, and had until April 13, 2013 to pay the overdue rent or apply to dispute the notice as required by the *Act*. The tenants failed to do either of these and therefore, I find that the landlord is entitled to an Order of Possession.

In the absence of any evidence from the tenants, I accept the evidence of the landlord relating to the amount of unpaid rent and I find that the landlord is entitled to recover \$2,688.00 relating to February, March, April and May, 2013. In addition I award the landlord the unpaid rent for June, 2013 in the amount of \$822.00 as the landlord has not received full possession of the rental suite from the tenant.

The landlord also claimed a \$25.00 returned cheque charge relating to February, 2013. Section 7(d) of the *Residential Tenancy Regulation* allows a landlord to charge a fee of no more than \$25.00 for the return of a tenant's cheque by a financial institution which is documented in a tenancy agreement. Section 5(e) of the written tenancy agreement provided by the landlord as evidence, indicates that this fee can be charged and as a result I find that the landlord is entitled to this fee of \$25.00.

As the landlord has been successful in this matter, the landlord is entitled to recover from the tenant the \$50.00 filing fee for the cost of this application. Therefore, the total amount awarded to the landlord is \$3,585.00. As the landlord already holds a \$537.50 security deposit, I order the landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the *Act*. As a result, the landlord is awarded \$3,047.50.

Conclusion

For the reasons set out above, I find the landlord is entitled to an Order of Possession effective **2 days after service on the tenants**. This order must be served on the tenant and may be filed and enforced in the Supreme Court as an order of that Court.

I find that the landlord is also entitled to monetary compensation pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$3,047.50**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) 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: June 11, 2013

Residential Tenancy Branch