



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Woodsmere Holdings Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

This hearing concerns the landlord's application for an order of possession / a monetary order as compensation for unpaid rent / retention of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

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

Pursuant to a written tenancy agreement, the tenancy began on February 1, 2013. Monthly rent of \$1,199.45 is due and payable in advance on the first day of each month, and a security deposit of \$600.00 was collected.

Arising from rent of \$1,199.45 which was unpaid when due on August 1, 2013, the landlord issued a 10 day notice to end tenancy for unpaid rent dated August 2, 2013. The notice was served by way of posting on the unit door on that same date. A copy of the notice was submitted in evidence.

Subsequently, after no rent was paid for August and no rent was paid for September, the landlord issued another 10 day notice to end tenancy for unpaid rent, this one dated September 3, 2013. This second notice was served by way of posting on the unit door on September 3, 2013. A copy of the notice was submitted in evidence.

To date, the tenants have made no payment toward rent for either August or September and they continue to reside in the unit.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony, I find that the tenants were served with 2 separate 10 day notices to end tenancy for unpaid rent dated, respectively, August 2 and September 3, 2013. The tenants made no payment toward rent following service of either of these notices, and neither did the tenants dispute either of these notices. The tenants are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date(s) of the notice(s). Accordingly, I find that the landlord has established entitlement to an **order of possession**.

As for the monetary order, I find that the landlord has established a claim of **\$2,448.90**, which is comprised as follows:

\$1,199.45: *unpaid rent for August*
\$1,199.45: *unpaid rent for September*
\$50.00: *filing fee*

I order that the landlord retain the security deposit of **\$600.00**, and I grant the landlord a **monetary order** under section 67 of the Act for the balance owed of **\$1,848.90** (\$2,448.90 - \$600.00).

Section 7 of the Regulation addresses **Non-refundable fees charged by landlord**, in part as follows:

7(1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1)(d) or (e) unless the tenancy agreement provides for that fee.

I note reference to a "late fee" on both 10 day notices. However, as the tenancy agreement does not appear to include any specific provision for the assessment of a

“late fee” for late payment of rent, the landlord’s application to recover such late fees in the circumstances of this dispute is hereby dismissed.

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 **\$1,848.90**. Should it be necessary, 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: September 25, 2013

Residential Tenancy Branch

