



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Estates Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1:43 p.m. in order to enable them to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. She gave sworn oral testimony and submitted a witnessed written Proof of Service document that stated that on August 8, 2013 at 5:01 p.m., she posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenants' door. She said that she sent both tenants a copy of the landlord's dispute resolution hearing package by registered mail on August 23, 2013. She provided copies of the Canada Post Tracking Numbers and Customer Receipts to confirm these mailings. She testified that the hearing package was delivered to the male tenant while the package to the female tenant was returned to the landlord by Canada Post as unclaimed on September 18, 2013. I am satisfied that the landlord served the above documents to the tenants and that in accordance with sections 89 and 90 of the *Act*, the tenants were both deemed served with the dispute resolution hearing packages on August 28, 2013, the fifth day after they were mailed.

At the commencement of the hearing, the landlord testified that the landlord has received an on-line deposit from the tenants in the amount of \$1,200.00 on September 9, 2013. She testified that the tenants have been issued a receipt for this payment,

accepted by the landlords “for use and occupancy only” and not to reinstate their tenancy. She said that the tenants’ payment has been applied to the amount owing which has now increased as a result of the tenants’ failure to pay their rent, parking and late fee for September 2013 and their rent and parking for October 2013. She asked for a revised monetary award totalling \$2,400.00 to reflect the unpaid rent and late fees that have become due since the landlord applied for dispute resolution. I agreed to amend the amount requested in the landlord’s application to reflect the subsequent amounts owed for this tenancy.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain the tenants’ security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This one-year fixed term tenancy commenced on December 1, 2012. Monthly rent is set at \$1,150.00, payable in advance on the first of each month. The Residential Tenancy Agreement (the Agreement) entered into written evidence by the landlord also calls for a \$45.00 monthly parking charge and a \$25.00 late charge for each month when the rent is not paid in full by the fifth day of the month. The landlord continues to hold the tenants’ \$575.00 security deposit paid on November 14, 2012.

The landlord’s original application for a monetary award of \$1,205.00 was for unpaid rent of \$1,150.00 owed for August 2013, the \$45.00 unpaid parking charge and a \$25.00 late fee for late payment of rent owing for that month. This amount was reduced by \$15.00 to reflect the tenants’ overpayment for an earlier month.

The tenants’ payment of \$1,200.00 left \$5.00 owing prior to September 1, 2013, as well as unpaid rent for September and October, and the late fees for September.

Analysis

The tenants failed to pay the \$1,150.00 identified as owing in the 10 Day Notice in full within five days of being deemed to have received the 10 Day Notice on August 11, 2013. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the landlord’s posted 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants’ failure to take either of these actions within five days led to the end of their tenancy on the corrected effective date of the notice. In this case, this required the tenants to vacate the premises by August 21,

2013. I find that their subsequent payment of \$1,200.00, accepted by the landlord for use and occupancy only, did not reinstate their tenancy nor negate the effect of the landlord's 10 Day Notice. As the tenants have not vacated the rental unit as per the requirements of the 10 Day Notice, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I find that the landlord is entitled to a monetary award of \$1,150.00 for unpaid rent currently owing from September and October 2013, plus the \$25.00 late charge owing for the tenants' failure to pay their September 2013 rent within the first five days of September, as per the provisions of their Agreement. I also allow the landlord a monetary award of \$5.00 that remained owing from August 2013, after the tenants' September 9, 2013 payment was received.

I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. I also allow the landlord to recover the \$50.00 filing fee from the tenants.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour under the following terms:

Item	Amount
Amounts Owing as of August 5, 2013 (\$1,150.00 + \$45.00 + \$25.00 = \$1,220.00 - \$15.00 Credit = \$1,205.00)	\$1,205.00
Unpaid Rent and Late Charge September 2013 (\$1,150.00 + \$25.00 = \$1,175.00)	1,175.00
Less Tenants' Payment of September 9, 2013	-1,200.00
Unpaid Rent Owing for October 2013	1,150.00
Less Security Deposit	-575.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,805.00

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 03, 2013

Residential Tenancy Branch

