



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bristol Estates
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlords' 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 late fees associated with that rent 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 their filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenants confirmed that they received the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on their door by one of the landlords' representatives at this hearing (AD) on September 3, 2013, as witnessed by Landlord Representative DS (the landlord). The tenants confirmed that they received copies of the landlords' dispute resolution hearing package sent by the landlords to both tenants by registered mail on September 19, 2013. I am satisfied that the landlords served the above documents and their written evidence to the tenants in accordance with the *Act*.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent and late fees? Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlords entered into written evidence a copy of the signed Residential Tenancy Agreement (the Agreement) between the parties signed on August 7, 2013. According

to the terms of the Agreement, this one-year fixed term tenancy was to begin on September 1, 2013, at a monthly rental rate of \$750.00, payable in advance. The landlord testified that the tenants paid a total of \$957.00 to the landlords on August 7, 2013, the date they signed the Agreement. She gave undisputed sworn testimony, supported by the Agreement, that the \$957.00 payment was comprised of the tenants' \$375.00 security deposit and a pro-rated payment of \$582.00 for early occupancy of the rental unit on August 7, 2013, the date they signed the Agreement. Both parties agreed that the tenants took possession of the rental unit on August 7, 2013, after making their \$957.00 payment and signing the Agreement. The landlord also gave undisputed sworn testimony that the landlords issued a receipt to the tenants showing the above breakdown of the tenants' \$957.00 payment to the landlords.

The male tenant (the tenant) did not dispute the landlords' claim that the tenants have not paid anything further to the landlords since their initial August 7, 2013 payment. The tenant testified that the tenants were planning to end this tenancy by November 15, 2013, because they were dissatisfied with the condition of the rental unit. Both tenants identified a number of faults with the rental unit, which they claimed was poorly maintained.

Landlord Representative AD testified that the landlords were not willing to allow the tenants to remain in the rental unit until November 15, 2013. She asked for an Order of Possession to take effect earlier than November 15, 2013. She also noted that the Agreement called for the imposition of a \$25.00 late fee to be added to the rent each time a monthly payment was late.

Analysis

There is undisputed evidence that the tenants failed to pay the full \$750.00 identified as owing in the 10 Day Notice within five days of being deemed to have received the 10 Day Notice on September 6, 2013. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of September 6, 2013. 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 September 16, 2013. As that has not occurred, I find that the landlords are entitled to a 2 day Order of Possession. The landlords 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 landlords may enforce this Order in the Supreme Court of British Columbia.

Based on the undisputed evidence of the parties, I find that the landlords are entitled to a monetary award of \$775.00 for each of September and October 2013 for unpaid rent

and associated late fees. As the landlords have been successful in their application, the landlords are entitled to recover their \$50.00 filing fee from the tenants. I allow the landlords to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award issued in the landlords' favour. No interest is payable over this period.

Conclusion

I grant an Order of Possession to the landlords 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 landlords' favour under the following terms, which allows the landlords to recover unpaid rent and the filing fee from the tenants and to retain their security deposit:

Item	Amount
Unpaid September 2013 Rent & Late Fee (\$750.00 + \$25.00 = \$775.00)	\$775.00
Unpaid October 2013 Rent & Late Fee (\$750.00 + \$25.00 = \$775.00)	775.00
Less Security Deposit	-375.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,225.00

The landlords are 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 28, 2013

Residential Tenancy Branch

