



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 pursuant to section 67;
- authorization to retain all or a portion of the security deposit for this tenancy 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 male tenant (the tenant) confirmed that he received the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on his door on September 5, 2013. I am satisfied that the landlords served the 10 Day Notice to the tenants in accordance with the *Act*.

The female landlord (the landlord) testified that the landlords sent the male tenant a copy of their dispute resolution hearing package by registered mail on September 16, 2013. She provided the Canada Post Tracking Number to confirm this mailing. The landlord said that the tenant told the landlords that the other tenant, his daughter, has vacated the rental unit. The tenant confirmed that he received the landlords' dispute resolution hearing package. Pursuant to sections 89(1) and (2) and 90 of the *Act*, I am satisfied that the male tenant was deemed served with the landlord's dispute resolution hearing package on September 21, 2013, five days after its mailing. I am not satisfied that the female tenant has been sent any copy of the landlords' hearing package in accordance with section 89 of the *Act*. As such, I dismiss the landlords' application for dispute resolution naming the female tenant as a respondent with leave to reapply.

At the commencement of the hearing, the landlord reduced the amount of the monetary award the landlords were seeking from \$3,840.00 to \$2,560.00. She did so as she

testified that the tenant did pay \$1,280.00, the amount owing from August 2013 in late September 2013, well after he received the landlords' 10 Day Notice.

Although the parties agreed that a 10 Day Notice had been issued to and received by the parties, the landlords had not entered into written evidence a copy of that 10 Day Notice. As this evidence was not in dispute, I advised the landlord that she had until 3:45 p.m. on the day of the hearing to fax a copy of the landlords' 10 Day Notice to my attention at the Residential Tenancy Branch (the RTB) in order to consider the landlords' request for an Order of Possession based on the 10 Day Notice. Within a few minutes of the end of this hearing, the RTB received a faxed copy of the landlords' 10 Day Notice.

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? 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 tenant?

Background and Evidence

This fixed term tenancy commenced on June 26, 2013. Monthly rent is set at \$1,280.00, payable in advance on the first. The landlords continue to hold the \$640.00 security deposit for this tenancy paid on June 26, 2013.

The tenant confirmed that he was behind in his rent by two months and owed the landlords rent for September and October 2013.

Analysis

There is undisputed evidence that the tenant(s) failed to pay the \$1,280.00 in rent identified as owing in the landlords' 10 Day Notice in full within five days of being deemed to have received the 10 Day Notice on September 8, 2013. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 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 this tenancy on the corrected effective date of the notice. In this case, this required the tenants to vacate the premises by September 18, 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. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the undisputed testimony of the parties, I find that the landlords are entitled to a monetary award of \$1,280.00 for each of September and October 2013, totalling \$2,560.00 for the two months currently owing. I allow the landlords to retain the \$640.00 security deposit from this tenancy, plus applicable interest in partial satisfaction of this monetary award. No interest is payable over this period. The landlords are also entitled to recover their \$50.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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 against the male tenant under the following terms, which allows the landlords to recover unpaid rent and their filing fee and to retain the security deposit for this tenancy:

Item	Amount
Unpaid September 2013 Rent	\$1,280.00
Unpaid October 2013 Rent	1,280.00
Less Security Deposit	-640.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,970.00

The landlords are provided with these Orders in the above terms and the male tenant must be served with this Order as soon as possible. Should the male tenant 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

