



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to retain all or part of the security deposit, and to recover the filing fee.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice") was considered. The landlord testified that the Notice and evidence was served on the tenants by registered mail on September 6, 2013. The landlord provided a registered mail receipt with two tracking numbers, one for each of the tenants, as evidence and confirmed that the names and address matched the names of the tenants and the rental unit address, as the tenants continued to live in the rental unit until they vacated on September 25, 2013. Documents sent by registered mail are deemed served five days after mailing under the *Act*. I find the tenants were deemed served on the fifth day after mailing, in accordance with the *Act*, as of September 11, 2013. I note that refusal of registered mail does not constitute grounds for Review.

Preliminary and Procedural Matter

The landlord stated that although the tenants vacated the rental unit by September 25, 2013 the landlord continues to seek an order of possession in case the tenants decide to return to the rental unit. As a result, I will consider the landlord's request for an order

of possession as the landlord included that as part of his original application for dispute resolution.

Issues 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 or utilities, and if so, in what amount?

Background and Evidence

The landlord submitted a copy of the written tenancy agreement in evidence. A month to month tenancy began on August 1, 2012. Monthly rent in the amount of \$625.00 was due on the first day of each month. The tenants paid a security deposit of \$300.00 at the start of the tenancy which the landlord continues to hold.

The landlord confirmed service of a 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") dated August 21, 2013, and served in person on tenant AB on August 21, 2013, which tenant AB signed. The signed proof of service document was submitted in evidence. The 10 Day Notice has an effective date of September 1, 2013 and indicates an amount owing of \$675.00 which the landlord stated was an error and should have read \$625.00. The tenants did not dispute the 10 Day Notice and did not pay the full amount of rent of \$625.00 owed within five days of receiving the 10 Day Notice.

The landlord has claimed a total of \$1,275.00 comprised of \$350.00 owing for July 2013 rent, \$300.00 owing for August 2013 rent, and \$625.00 owing for September 2013 rent. The landlord is also seeking to retain the tenants' full security deposit towards the amount of unpaid rent owing, and to recover the filing fee. The landlord stated that the tenants have not provided their written forwarding address.

The landlord submitted the tenancy agreement, registered mail receipts, a proof of service document, 10 Day Notice in evidence.

Analysis

Based on the documentary evidence and the undisputed testimony of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenants failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice on August 21, 2013. The effective vacancy date of the Notice was September 1, 2013. Although

the tenants did not vacate the rental unit until September 25, 2013, the landlord is concerned that the tenants may return to the rental unit, and is seeking an order of possession should the tenants return to the rental unit. Pursuant to section 46 of the *Act*, I find the tenants are conclusively presumed to have accepted that the tenancy ended on the effective vacancy date of the Notice which was September 1, 2013. The tenants continued to occupy the rental unit until September 25, 2013. Based on the above, **I grant** the landlord an order of possession effective two (2) days after service on the tenants.

Claim for unpaid rent – The landlord testified that the tenants owe \$1,275.00 in unpaid rent comprised of \$350.00 owing for July 2013 rent, \$300.00 owing for August 2013, and \$625.00 owing for September 2013 rent as the tenants did not vacate until September 25, 2013. Pursuant to section 26 of the *Act*, tenants must pay rent when it is due in accordance with the tenancy agreement. Based on the above, **I find** that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. **I find** the landlord has met the burden of proof and has established a monetary claim of **\$1,275.00** comprised of unpaid rent as described above.

The landlord is holding the tenant's security deposit of \$300.00 which was paid by the tenants at the start of the tenancy which has accrued \$0.00 in interest since the start of the tenancy. I accept the landlord's undisputed testimony that the tenants have not provided their written forwarding address.

As the landlord has succeeded with their application, **I grant** the landlord the recovery of the filing fee in the amount of **\$50.00**.

Monetary Order – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit which has accrued no interest as follows:

Unpaid portion of July 2013 rent	\$350.00
Unpaid portion of August 2013 rent	\$300.00
Unpaid September 2013 rent	\$625.00
Filing fee	\$50.00
Subtotal	\$1,325.00
<i>(Less tenants' full security deposit)</i>	<i>-(\$300.00)</i>
TOTAL OWING TO THE LANDLORD BY THE TENANTS	\$1,025.00

Conclusion

I find that the landlord has proven their claim and is, therefore, entitled to an order of possession effective two (2) days after service upon the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

I find that the landlord has established a total monetary claim of \$1,325.00 as indicated above. I authorize the landlord to retain the tenants' full security deposit of \$300.00 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance owing by the tenants in the amount of \$1,025.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 10, 2013

Residential Tenancy Branch

