



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 is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent, loss of revenue and late fees; to apply a portion of the security deposit in satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenants.

The Landlord's agents gave affirmed testimony at the Hearing.

AD testified that the Notice of Hearing documents were handed to each of the Tenants, at the rental unit at 2:46 p.m. on October 16, 2013.

Based on the AD's affirmed testimony, I am satisfied that the Tenants were duly served with the Notice of Hearing documents. Despite being served with the Notice of Hearing documents, the Tenants did not sign into the teleconference and the Hearing proceeded in their absence.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession and a monetary award for unpaid rent?
- If so, may the Landlord deduct its monetary award from the security deposit?

Background and Evidence

The Landlord's agents gave the following testimony:

A copy of the tenancy agreement was provided in evidence. This tenancy began on June 1, 2012. Monthly rent is \$700.00, due the first day of each month. The Tenants paid a security deposit in the amount of \$350.00 on May 22, 2012.

The Tenants did not pay rent in full for September, 2013, and did not pay any rent for October when it was due. The Landlord issued a Notice to End Tenancy for Unpaid Rent in the amount of \$830.00 on October 2, 2013 (the "Notice"). A copy of the Notice was provided in evidence.

The Tenants were served with the Notice on October 2, 2013, when they came to the Landlord's office. AD served them and DS was present as a witness.

Subsequent to being served with the Notice, the Landlords received some payments towards the outstanding rent, but explained to the Tenants that they were not reinstating the tenancy and gave them receipts for use and occupancy only.

The Landlord's agents requested a monetary award for unpaid rent, late fees and loss of revenue, calculated as follows:

Date	Amount due	Amount paid	Balance owing
Carried forward from September, 2013			\$130.00
Late fee	\$25.00		\$155.00
October 1, 2013 rent	\$700.00		\$855.00
Late fee	\$25.00		\$880.00
October 11, 2013 cash payment		\$500.00	\$380.00
October 22, 2013 from Ministry		\$350.00	\$30.00
October 23, 2013 cash payment		\$450.00	Credit \$420.00
November 1, 2013 rent	\$700.00		\$280.00

Analysis

Based on the undisputed affirmed testimony of the Landlord's agents, I accept that the Tenants were served with the Notice to End Tenancy by on October 2, 2013 and that the Tenants did not pay all of the arrears, or file for dispute resolution, within 5 days of receiving the documents. I accept the Landlord's agents' testimony that they explained to the Tenants that they were accepting payments made for use and occupancy only. Therefore, pursuant to Section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on October 12, 2013. I find that the Landlord is entitled to an Order of Possession and a monetary award as set out above, in the amount of **\$280.00**.

The Landlord has been successful in its application and I find that it is entitled to recover the cost of the **\$50.00** filing fee from the Tenants.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply a portion of the security deposit in satisfaction of the Landlord's monetary award. The balance of the security deposit in the amount of **\$20.00** (\$350.00 - \$280.00 - \$50.00) must be applied in accordance with the provisions of the Act.

Conclusion

I hereby grant the Landlord an Order of Possession **effective 2 days after service of the Order upon the Tenants**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord may deduct **\$330.00** from the security deposit in satisfaction of its monetary award and recovery of the filing fee. The balance of the security deposit in the amount of **\$20.00** must be applied in accordance with the provisions of the Act.

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: November 22, 2013

Residential Tenancy Branch

