



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Trailbazer Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR. MNR

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; and
- a monetary order for unpaid rent pursuant to section 67.

The tenants did not attend this hearing, although I waited until 3:15 p.m. in order to enable them to connect with this teleconference hearing scheduled for 3:00 p.m. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, and to make submissions.

Landlord representative TS (the agent) testified that when he attempted to hand the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the tenants on August 31, 2013, another woman "CC" identified herself as living at the rental unit. He entered sworn oral testimony and written evidence that he posted a copy of the 10 Day Notice on the tenants' door at 2:14 p.m. on August 31, 2013. He entered into written evidence a Proof of Service document attesting to his service of the 10 Day Notice to the tenants in this manner. In accordance with sections 88 and 90 of the *Act*, I find that the landlords served the tenants with the 10 Day Notice on September 3, the third day after its posting.

The landlords entered written evidence that they served the tenants with copies of the landlords' dispute resolution hearing package to both tenants by registered mail on October 12, 2013. The landlords entered into written evidence copies of the Canada Post Tracking Number and Customer Receipts to confirm these registered mailings. The landlords also entered into written evidence a copy of the Canada Post Tracking Record showing that the hearing packages were returned to Landlord EC by Canada Post. Landlord EC confirmed that the hearing packages were returned to him by Canada Post. After carefully reviewing the legislation and the circumstances surrounding the landlords' service of the hearing package to the tenants and in accordance with sections 89(1) and (2), and section 90 of the *Act*, I find that the tenants

were deemed served with the landlords' hearing package on October 17, 2013, five days after their registered mailing to the tenants.

At the hearing, the agent testified that since the landlords applied for dispute resolution another monthly rent payment had been missed by the tenants. The agent asked for authorization to increase the amount of the requested monetary award from \$2,800 by \$650.00 to \$3,438.00. Under the circumstances, I will consider this increased request for a monetary award.

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?

Background and Evidence

This periodic tenancy commenced on October 1, 2010. According to the terms of the tenancy agreement, monthly rent is set at \$650.00, payable in advance on the first of each month. The landlords continue to hold the tenants' \$325.00 security deposit paid on or about October 1, 2010.

The landlords testified that the tenants have not paid anything towards this tenancy since the landlords identified \$1,494.00 as owing as of August 1, 2013, in the 10 Day Notice. Since then rent has not been paid for September, October or November 2013.

Analysis

There is undisputed evidence that the tenants failed to pay the \$1,494.00 identified as owing in the 10 Day Notice in full within five days of being deemed to have received the 10 Day Notice. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have received 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 effective date of the notice. In this case, this required the tenants **and anyone on the premises** to vacate the premises by September 13, 2013, the corrected effective date. As that has not occurred, 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 and anyone on the premises do 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 evidence before me, I find that the landlord is entitled to a monetary award of \$1,494.00 for rent that was owing as of August 1, 2013, plus \$650.00 for each of September, October and November 2013.

Although the landlords' application does not seek to retain the security deposit for this tenancy, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the security deposit for this tenancy plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

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) or anyone on the premises 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 to retain the tenants' security deposit:

Item	Amount
Rent Owing as of August 1, 2013	\$1,494.00
Unpaid September 2013 Rent	650.00
Unpaid October 2013 Rent	650.00
Unpaid November 2013 Rent	650.00
Less Security Deposit	-325.00
Total Monetary Order	\$3,119.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the 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: November 21, 2013

Residential Tenancy Branch

