



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, 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 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.

The tenants did not attend this hearing, although I waited until 3:13 p.m. in order to enable them to connect with this teleconference hearing scheduled for 3:00 p.m. Both landlords attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The male landlord testified that he handed both tenants a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on September 14, 2013. The female landlord testified that she witnessed the male landlord hand the tenants this Notice on September 14, 2013. As the landlords had not submitted a copy of their 10 Day Notice into written evidence, I advised them they would need to fax a copy of this document to the Residential Tenancy Branch (the RTB) before the end of the business day if they wanted to obtain the Order of Possession they were seeking on the basis of the 10 Day Notice. They said that they would fax a copy of the 10 Day Notice to the RTB shortly after the completion of the hearing. The RTB subsequently received a faxed copy of the landlords' 10 Day Notice. I am satisfied that the landlords served their 10 Day Notice to the tenants in accordance with the *Act*.

The landlords testified that they sent both tenants copies of their dispute resolution hearing package by registered mail on September 25, 2013. They entered into written evidence copies of the Canada Post Tracking Numbers for these registered mailings. The male landlord (the landlord) testified that Canada Post's Online Tracking System revealed that the landlords' registered mailings were successfully delivered to the

tenants. I am satisfied that the landlords served their hearing packages to the tenants in accordance with section 89 of the *Act*.

At the commencement of this hearing, I asked for clarification of the landlords' current application as they referenced a decision issued by a previous Arbitrator appointed under the *Act* in May 2013. The landlords testified that after having been issued an Order of Possession based on unpaid rent owing earlier this year, the tenants paid the \$1,200.00 monetary Order issued. The landlords did not act on that 2 Day Order of Possession and reinstated this tenancy as the tenants paid their rent in full until September 1, 2013. They testified that the tenants are now in rental arrears again, and the landlords are now seeking the issuance of a new Order of Possession and a monetary Order. The landlords confirmed that the previous Arbitrator's decision allowed them to retain the tenants' security deposit. As such, the landlords withdrew their application to retain the tenants' security deposit as that action has already occurred. The landlords' application to retain the tenants' security deposit is withdrawn.

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 recover the filing fee for this application from the tenants?

Background and Evidence

The female landlord testified that this periodic tenancy began in May or June of 2012. Monthly rent is set at \$700.00, payable in advance on the first of each month. The tenants paid a \$350.00 security deposit to the landlords at the commencement of this tenancy. However, as per the previous Arbitrator's May 8, 2013 decision, the landlords have already been ordered to retain that security deposit in partial satisfaction of the monetary award issued in that decision.

The landlords' 10 Day Notice issued on September 14, 2013, identified \$250.00 in unpaid rent owing for September 2013. The female landlord testified that the tenants have not paid anything further to the landlords since the landlords issued this 10 Day Notice. The landlords' original application for dispute resolution sought a monetary award of \$2,100.00. Prior to the hearing, the landlords revised their application to request a monetary award of \$1,450.00. At the hearing, the male landlord testified that \$250.00 remains owing for September 2013, and a further \$700.00 is owing for each of October and November 2013. He requested the issuance of a monetary award of \$1,650.00, plus the recovery of the landlords' \$50.00 filing fee.

Analysis

The tenants failed to pay the \$250.00 identified as owing in the 10 Day Notice in full within five days of receiving the 10 Day Notice. 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 their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by September 24, 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 landlords' undisputed sworn testimony, I find that the landlords are entitled to a monetary award of \$250.00 for unpaid rent owing for September 2013 and \$700.00 for October 2013. Given the date of this hearing and my decision to issue the landlords a 2 day Order of Possession, it remains unclear as to whether the landlords will suffer an actual loss of income for the entire month of November 2013. As such, I issue a monetary award in the landlords' favour in the amount of \$350.00 for their loss of rent for the first half of November 2013. The landlords are at liberty to reapply for the recovery of the remaining one-half of the rent owing for November 2013 if their efforts to mitigate their loss of rent by locating a new tenant for this rental unit prove unsuccessful. As the landlords have been successful in their application for dispute resolution, I allow them to recover their \$50.00 filing fee from the tenants.

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) 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 their filing fee:

Item	Amount
Unpaid September 2013 Rent	\$250.00
Unpaid October 2013 Rent	700.00
Unpaid Rent for First Half of November 2013	350.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,350.00

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: November 05, 2013

Residential Tenancy Branch

