



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Don Wan Apartments Ltd.
Vancouver Eviction Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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 and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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 1:50 p.m. in order to enable them to connect with this teleconference hearing scheduled for 1:30 p.m. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, and to make submissions.

Female Landlord MG (the building manager) testified that she handed the male tenant the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on October 4, 2013. She also entered into written evidence a copy of a statement signed by both her and the male tenant confirming that she handed the 10 Day Notice to the male tenant on October 4, 2013. I am satisfied that the building manager served the tenants with the 10 Day Notice in accordance with the *Act*.

The agent's (VES's) female representative (SA) testified that the agent sent both tenants copies of the landlords' dispute resolution hearing package by registered mail on October 23, 2013. She entered into written evidence copies of the Canada Post Tracking Numbers to confirm these registered mailings. She also testified that the agent's male representative also handed the tenants copies of the landlords' dispute resolution hearing package on October 23, 2013. I am satisfied that the tenants were

served with the landlords' dispute resolution hearing package in accordance with the Act.

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 tenants?

Background and Evidence

This tenancy commenced on July 7, 2008. At the end of the initial fixed term for this tenancy, the tenancy continued as a periodic tenancy. Current monthly rent is set at \$1,750.00, payable in advance on the first of each month. The landlords continue to hold the tenants' \$800.00 security deposit paid on July 5, 2008.

The landlords applied for an Order of Possession on the basis of the 10 Day Notice issued on October 4, 2013, identifying \$1,750.00 in outstanding rent owing as of that date. The landlords' application for a monetary award requested a monetary award of \$5,000.00 to compensate the landlords for unpaid rent owing from October and November 2013, and for anticipated unpaid rent that remains owing for December 2013. At the hearing, the building manager testified that the tenants paid \$1,750.00 in cash on November 28, 2013, which she said she applied to the unpaid rent owing from October 2013. She repeated three times at the hearing that she accepted the tenants' \$1,750.00 cash payment for rent and did not issue any form of receipt to the tenant.

Analysis

I heard undisputed sworn testimony that the landlords' representative, the building manager, accepted the tenants' \$1,750.00 for unpaid rent, well after the October 15, 2013, effective date to end this tenancy. By accepting this payment for rent on November 28, 2013, and without advising that it was accepted for use and occupancy only and not to reinstate this tenancy, I advised the parties of my finding that the building manager had reinstated this tenancy when she accepted the tenants' rent payment on November 28, 2013. By doing so, this tenancy continues and the existing 10 Day Notice is of no force or effect.

At this point in the hearing, the agent's male representative became involved. After some brief clarification of the status of this matter, he withdrew all aspects of this application for dispute resolution. The landlords' application for dispute resolution is withdrawn.

Conclusion

The landlords' application for dispute resolution is withdrawn. This tenancy continues and the 10 Day Notice issued on October 4, 2013, is of no force or effect.

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: December 02, 2013

Residential Tenancy Branch

