



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's 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' pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 10:11 a.m. in order to enable them to connect with this teleconference hearing scheduled for 10:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord entered written evidence from his agent and sworn testimony that his agent posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenants' door at 1:40 p.m. on November 8, 2013. I am satisfied that the landlord's agent served this Notice to the tenants in accordance with section 88 of the *Act*. In accordance with section 90 of the *Act*, the 10 Day Notice was deemed served to the tenants on November 11, 2013, the third day after its posting.

The landlord gave written evidence and sworn oral testimony that copies of the landlord's dispute resolution hearing package were sent to both tenants by registered mail on December 20, 2013. The landlord entered into written evidence copies of the returned envelopes, including the Canada Post Tracking Numbers, showing that his hearing packages sent to the tenants by Registered Mail were refused by the tenants and returned to him on January 2, 2014. In accordance with sections 89 and 90 of the

Act, I am satisfied that both tenants were deemed served with the landlord's dispute resolution hearing packages on December 27, 2013.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenants' deposits in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

By August 22, 2013, both parties signed a fixed term Residential Tenancy Agreement for the period from August 31, 2013 until May 31, 2015. As per that Agreement, monthly rent is set at \$2,450.00, payable in advance on the last day of each month. The landlord continues to hold the tenants' \$1,225.00 security deposit and \$500.00 pet damage deposit, both paid on August 31, 2013.

The landlord issued the 10 Day Notice for unpaid rent of \$2,450.00 owing for November 2013. He testified that the tenants have not made any further payments since then

The landlord applied for a monetary award of \$4,900.00, to recover unpaid rent owing for November and December 2013. Since applying for dispute resolution, another \$2,450.00 has become owing for this tenancy for January 2014. At the hearing, I allowed the landlord to amend his application to include the additional \$2,450.00 that has become owing as of January 1, 2014. The revised amount of the monetary award sought by the landlord is \$7,350.00, plus the landlord's filing fee for his application.

Analysis

The tenants failed to pay their November 2013 rent in full within five days of being deemed to have received the 10 Day Notices. 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 their tenancy on the corrected effective date of the notice. In this case, this required the tenants to vacate the premises by November 21, 2013. 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 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 provided by the landlord, I am satisfied that the tenants continue to owe the landlord three months of unpaid rent extending from November 2013 until January 2014. I issue a monetary award in the landlord's favour in the amount of \$2,450.00 for each of these three months. I allow the landlord to retain the tenants' deposits plus applicable interest to partially offset the landlord's monetary award. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover his \$50.00 filing fee for this application.

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 landlord's favour under the following terms, which allows the landlord to recover unpaid rent and his filing fee, and to retain the tenants' deposits:

Item	Amount
Unpaid November 2013 Rent	\$2,450.00
Unpaid December 2013 Rent	2,450.00
Unpaid January 2014 Rent	2,450.00
Less Deposits (\$1,225.00 + \$500.00 = \$1,725.00)	-1,725.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$5,675.00

The landlord is 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: January 13, 2014

Residential Tenancy Branch

