



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD

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 pursuant to section 67; and
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The tenants did not attend this hearing, although I waited until 3:13 p.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 3:00 p.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 testified that he placed the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) in the tenants' mailbox on November 5, 2013. The landlord testified that he sent the tenants a copy of his dispute resolution hearing package by registered mail on November 27, 2013.

Prior to the hearing, the landlord had not provided copies of either the 10 Day Notice or the Canada Post Tracking Number to confirm his registered mailing of his hearing package to the tenants. I provided the fax number of the Residential Tenancy Branch (the RTB) to the landlord. I advised him that I would be dismissing his application with leave to reapply unless he were to provide this written evidence to substantiate that he had given the tenants a 10 Day Notice and sent them a copy of his hearing package by the following morning at 10:00 a.m. In the evening of January 20, 2014, the day of the hearing, the RTB received the requested information from the landlord by fax.

After reviewing the landlord's information, I find that the landlord has served a valid 10 Day Notice to the tenants. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 10 Day Notice on November 8, 2013, the third day after it was left in the tenants' mailbox.

The landlord provided a copy of the Canada Post Tracking Number and Customer Receipt to confirm his registered mailing of his dispute resolution hearing package to the male tenant on November 27, 2013. In accordance with sections 89 and 90 of the *Act*, I find that the male tenant was deemed served with a copy of the landlord's dispute resolution hearing package on December 2, 2013, the fifth day after its registered mailing. Based on the landlord's written evidence, I am not satisfied that the landlord has served his dispute resolution hearing package to the female tenant. I dismiss his application for dispute resolution naming the female tenant as a Respondent with leave to reapply.

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' security deposit in partial satisfaction of the monetary award requested?

Background and Evidence

This tenancy commenced as a 2-year fixed term tenancy on December 1, 2009. Monthly rent is currently set at \$4,200.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$2,200.00 security deposit paid by the tenants on or about December 1, 2009.

The landlord entered undisputed sworn testimony and written evidence that the tenants have not paid their monthly rent for the months of November and December 2013, and January 2014. The landlord testified that the tenants have not paid anything further to the landlord since he issued the 10 Day Notice on November 5, 2013. At this point, the landlord maintained that \$12,600.00 remains owing from this tenancy.

Analysis

The tenants failed to pay the November 2013 rent 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 their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by November 30, 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 male tenant. If the male tenant 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 landlord's undisputed evidence, I issue a monetary award in the amount of \$12,600.00 in the landlord's favour against the male tenant to compensate the landlord for unpaid rent owing for the past three months of this tenancy.

I order the landlord to retain the \$2,200.00 security deposit for this tenancy plus applicable interest to partially satisfy the monetary award issued in this decision. 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) 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 following terms in the landlord's favour and against the male tenant:

Item	Amount
Unpaid November 2013 Rent	\$4,200.00
Unpaid December 2013 Rent	4,200.00
Unpaid January 2014 Rent	4,200.00
Less Security Deposit	-2,200.00
Total Monetary Order	\$10,400.00

The landlord is provided with these Orders in the above terms and the male tenant must be served with this Order as soon as possible. Should the male 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.

The landlord's application for dispute resolution naming the female tenant as a Respondent is dismissed with leave to reapply.

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 21, 2014

Residential Tenancy Branch

