



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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 pursuant to section 67;
- authorization to retain all or a portion of the tenants' security and pet damage 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 2:14 p.m. in order to enable them to connect with this teleconference hearing scheduled for 2:00 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 she posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenants' door at 1:53 p.m. on January 3, 2014. She entered into written evidence a signed and witnessed Proof of Service document regarding her posting of the 10 Day Notice on the tenants' door. The landlord testified that she handed the female tenant a copy of the landlord's dispute resolution hearing package at 9:30 a.m. on January 18, 2014. She entered written evidence of a statement initialled by the female tenant confirming her hand delivery of this package to the female tenant on that date. I am satisfied that the tenants were served with these documents in accordance with the *Act*.

At the commencement of the hearing, the landlord lowered the amount of her requested monetary award from \$1,590.00 to \$400.00 the amount she claimed was currently owing.

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

This tenancy began as a one-year fixed term tenancy on October 1, 2012. When the initial term expired, the tenancy continued as a periodic tenancy. Monthly rent is currently set at \$1,100.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$550.00 security deposit and \$550.00 pet damage deposit, both paid on September 5, 2012.

The landlord's original application for a monetary award of \$1,590.00 was for unpaid rent then owing for January 2014, and anticipated loss of rent for February 2014. The landlord stated that a balance of \$5.00 was owed by the tenants as of December 31, 2013. On January 2, 2014, the tenants paid \$600.00, which still left \$505.00 owing as of that date. On January 16, 2014, the landlord received another payment of \$540.00 from the tenants, leaving the tenants with a positive balance of \$35.00. However, the landlord testified that the tenants have only paid \$700.00 of their February 2014 rent on February 2, 2014. She said that this leaves a balance of unpaid rent in the amount of \$365.00 at the time of this hearing. The landlord testified that she has issued the tenants receipts for all payments made after the 10 Day Notice was issued stating that the payments were received for "use and occupancy only."

Analysis

The tenants failed to pay the \$540.00 identified as owing in the 10 Day Notice in full within five days of being deemed to have received the 10 Day Notice on January 6, 2014. 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 January 13, 2014.

However, the landlord accepted payments from the tenants for use and occupancy only, which allowed the tenants to remain in the rental unit for all of January 2014 and part of February 2014. I find that the landlord's acceptance of the tenants' payment of all but \$365.00 of the \$1,100.00 that became owing for February 2014 enables the tenants to remain in this tenancy for the pro-rated number of days of February that their payment of \$735.00 would enable them to remain in the rental unit. Based on the landlord's acceptance of \$735.00 for use and occupancy only for the month of February 2014, I find that the landlord has accepted payment for use and occupancy only for 66.82% of the month of February 2014 (i.e., $\$735.00/\$1,100.00 = 66.82\%$). This equates to an

acceptance of a payment for use and occupancy only for the period from February 1, 2014 until February 19, 2014 ($66.82\% \times 28 \text{ days} = 18.71 \text{ days}$). For these reasons, I issue an Order of Possession to take effect by 1:00 p.m. on February 20, 2014, the first full day after the period of acceptance of payment by the landlord for use and occupancy only. 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 by that time and date, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the undisputed sworn testimony of the landlord, I find that the landlord is entitled to a monetary award of \$365.00, the amount of rent currently owing for this tenancy. I order the landlord to retain this amount from the tenants' security deposit.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective at 1:00 p.m. on February 20, 2014. 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 award in the landlord's favour in the amount of \$365.00 for unpaid rent. To implement this monetary award, I order the landlord to retain \$365.00 from the tenants' \$550.00 security deposit. The revised value of this security deposit is reduced to \$185.00. The value of the tenants' pet damage deposit remains \$550.00.

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: February 07, 2014

Residential Tenancy Branch

