



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Metro Vancouver Housing Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, 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; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 3:11 p.m. in order to enable them to connect with this teleconference hearing scheduled for 3:00 p.m. The landlord's representatives attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord's male representative (the male landlord) testified that he handed a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the eldest daughter of the female tenant on February 7, 2014. He confirmed that this adult daughter of the female tenant was the person who gave him a partial rent payment from the tenants earlier that month. Based on the male landlord's undisputed sworn testimony, supported by the names and ages of the female tenant's children on the Residential Tenancy Agreement entered into written evidence by the landlord, I find that the male landlord served the 10 Day Notice to the tenants in accordance with section 88(e) of the *Act*.

The landlord's female representative (the landlord) testified that she sent both tenants copies of the landlord's dispute resolution hearing package by registered mail on February 21, 2014. She provided copies of the Canada Post Tracking Number to confirm these registered mailings. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's dispute resolution hearing package on February 26, 2014, the fifth day after the registered mailings.

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 and losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This periodic tenancy commenced on July 15, 2008. The portion of the current monthly economic rent for this subsidized rental unit paid by the tenants is \$500.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$492.50 security deposit paid on July 8, 2008.

The landlord's 10 Day Notice identified \$100.00 as owing from the tenants' February 2014 rent on February 7, 2014, when that Notice was issued. The landlord testified that the tenants did pay \$100.00 to the landlords on February 24, 2014. This was after the date when this tenancy was to end (i.e., February 17, 2014). The landlord testified that the tenants' \$100.00 payment on February 24 was accepted for use and occupancy only and not to reinstate this tenancy. The landlord testified that the tenants have not paid their March 2014 rent after learning that their tenancy was not being reinstated.

The landlord revised the requested amount of the monetary award from \$1,100.00, the amount stated in the landlord's application for dispute resolution, to \$500.00 for unpaid rent owing for March 2014. The landlord also requested the recovery of the \$50.00 filing fee from the tenants. She asked for an Order of Possession to take effect on March 31, 2014.

Analysis

I find that the landlord's acceptance of the tenants' \$100.00 payment on February 24, 2014, after the tenancy was scheduled to end did not reinstate this tenancy. The tenants failed to pay the \$100.00 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 February 17, 2014. As that has not occurred, I find that the landlord is entitled to an Order of Possession to take effect by 1:00 p.m. on March 31, 2014. 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 date and time, the landlord may enforce this Order in the Supreme Court of British Columbia.

I find that there is undisputed sworn testimony that \$500.00 in rent remains owing from March 2014. I issue a monetary Order in the landlord's favour in this amount.

Although the landlord's application does not seek to retain the tenants' security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application from the tenants.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective at 1:00 p.m. on March 31, 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 Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and the filing fee and to retain the tenants' security deposit:

Item	Amount
Unpaid March 2014 Rent	\$500.00
Less Security Deposit plus Interest (\$492.50 + \$3.57 = \$496.07)	-496.07
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$53.93

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: March 13, 2014

Residential Tenancy Branch

