



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sutton Group Medallion Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent, for authority to retain the tenants' security deposit, and to recover the filing fee.

The parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence or application.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and to recover the filing fee?

Background and Evidence

The undisputed evidence was that this tenancy began on January 1, 2013, monthly rent is \$1975, and a security deposit of \$987.50 was paid by the tenants at the beginning of the tenancy.

The landlord's agent (hereafter "landlord") gave evidence that on February 2, 2014, she served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the

“Notice”), by leaving it with the tenants, listing unpaid rent of \$1975 as of February 1, 2014. The effective vacancy date listed on the Notice was February 16, 2014.

The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenants had five days to dispute the Notice by making an application for dispute resolution.

The landlord stated that the tenants made three rent payments since the date the Notice was issued, in the amount of \$500 on February 20, \$300 on March 18, and \$300 on April 3, 2014, and as of the date of the hearing, the tenants owed \$4825 in unpaid rent.

The landlord’s monetary claim included a request for unpaid rent for February in the amount of \$1475, \$1974 for March, and any other outstanding rent.

The tenants acknowledged the payments as stated by the landlord; the parties, however, according to the tenants had reached an agreement to resolve their issues due to the employment problems suffered by the tenants.

The tenants pointed out that their documentary evidence shows their resolution to the matter.

I note that the tenants denied receiving the second page of the 2 page Notice.

In response to the tenants’ submissions, the landlord stated that she printed 2 pages from her computer and handed both pages to the tenants. Additionally, the landlord stated that there was an initial attempt to work out the issue of unpaid rent, but that there was never a resolution due to the continuing unpaid rent, and that receipts for the rent payments were for use and occupancy only.

Analysis

After reviewing the evidence of the landlord and tenants, and having heard from the parties, I find the tenants were served a 2 page 10 Day Notice to End Tenancy for Unpaid Rent, did not pay the outstanding rent listed or file an application for dispute resolution in dispute of the Notice within five days of service and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I do not find evidence to support that the tenants’ allegation that the parties had resolved their issues, and the landlord disagreed that a resolution had been reached. I relied upon the evidence of the landlord which shows receipts were issued to the tenants upon a use and occupancy basis, which does not support a reinstatement of the tenancy.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective two days after service of the order upon the tenants.

I also find that the landlord is entitled to a monetary award of \$4875 comprised of outstanding rent of \$4825 through April, 2014, and the \$50 filing fee paid by the landlord due to their successful application.

Conclusion

The landlord's application has been granted.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

At the landlord's request, I allow the landlord to retain the tenants' security deposit of \$987.50 in partial satisfaction of the monetary award.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$3887.50, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

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* and is being mailed to both the applicant and the respondents.

Dated: April 23, 2014

Residential Tenancy Branch

