



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's Application: CNC, MNDC, LRE, FF, O
Landlord's Application: OPR, MND, MNR, MNSD, FF

Introduction

This hearing was scheduled to deal with cross applications. The tenants applied to cancel a 1 Month Notice to End Tenancy for Cause; for monetary compensation for damage or loss under the Act, regulations or tenancy agreement; orders suspending the landlord's right to enter the rental unit; and, other issues. The landlords applied for an Order of Possession for unpaid rent; monetary compensation for damage and unpaid rent; and, authorization to retain the security deposit. The landlords appeared at the hearing; however, the tenants did not despite leaving the teleconference call open approximately 40 minutes.

The landlords confirmed receipt of the tenants' Application for Dispute Resolution and Notice of Hearing. Since the tenants did not appear at the hearing and the landlords were prepared to deal with the tenants' application, given the tenants failure to appear at the hearing, I dismissed the tenants' application without leave to reapply.

The landlords submitted registered mail receipts, including tracking numbers, as proof the landlord's hearing documents were sent to the tenants on May 10, 2014. I accepted that the tenants were served with the landlords' hearing documents in a manner that complies with the Act and I continued to hear from the landlords without the tenants present.

Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession?
2. Are the landlords entitled to a Monetary Order for unpaid rent and damage?
3. Are the landlords authorized to retain the security deposit?

Background and Evidence

The fixed term tenancy commenced June 15, 2013 and is set to expire June 30, 2014. The tenants paid a security deposit of \$1,700.00. The tenants are required to pay rent of \$1,700.00 on the 1st day of every month.

On March 9, 2014 the landlords posted a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) with an effective date of April 30, 2014 on the door of the rental unit. The tenants filed to dispute the 1 Month Notice on April 3, 2014 and that application has been dismissed as explained above.

The tenants did not pay rent for the month of April and the landlords posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the door of the rental unit on April 4, 2014. The landlords submitted that, in recognition of the over-paid security deposit, they were willing to apply the \$850.00 over-payment to one-half of April's rent and collect the remaining \$850.00 from the tenants but the tenants did not pay the balance. The tenants have not returned possession of the rental unit to the landlords and did not pay any rent for the month of May 2014.

The landlords requested an Order of Possession be provided to them as soon as possible and requested an award for unpaid and/or loss of rent for the months of April and May 2014.

The landlords also submitted photographs and several text messages exchanged between the parties with respect to damage to the entry door of the rental unit. Aside from the text messages, the landlords submitted that the tenants acknowledged that the door was damaged by the male tenant during a conversation. The landlords are seeking to recover \$1,200.00 from the tenants for the damage. The amount claimed is based upon an estimate received from the on-site caretaker. The landlords explained that the strata corporation requires that the entry door be replaced with a specific type of door and door handle, along with a particular paint colour, so as to match all the other doors in the building.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

I find the tenancy has ended and the landlords are entitled to an Order of Possession under section 55 of the Act, as requested, based upon the Notices to End Tenancy served to the tenants since:

1. The tenant's application to cancel the 1 Month Notice was dismissed and the landlords orally requested an Order of Possession during the hearing; and,
2. The tenants were conclusively presumed to have accepted that the tenancy would end as they did not pay the outstanding rent for April 2014 or file to dispute the 10 Day Notice within five days of receiving the 10 Day Notice that was posted on their door on April 4, 2014.

With this decision I provide the landlords with an Order of Possession effective two days after service upon the tenants. The 10 Day Notice may be served by posting it on the door of the rental unit or any other method permitted under section 88 of the Act.

I am satisfied the landlords are entitled to recover unpaid and/or loss of rent from the tenants for the months of April and May 2014 since possession has not yet been returned to the landlords. I also award the landlords recovery of the filing fee they paid for their Application for Dispute Resolution and I authorize the landlords to retain the tenants' security deposit in partial satisfaction of the unpaid and/or loss of rent.

Upon review of the photographs, the text messages, and the landlords' undisputed testimony, I find the tenants liable to compensate the landlords for the damaged entry door. I find the landlords' submissions as to the value of the loss to be credible and reasonable. Therefore, I grant their request to recover \$1,200.00 from the tenants for this damage.

With this decision I provide the landlords with a Monetary Order in the amount of \$2,950.00 calculated as:

Unpaid and/or loss of rent	\$ 3,400.00
Less: security deposit	(1,700.00)
Plus: filing fee	50.00
Plus: compensation for damaged door	<u>1,200.00</u>
Monetary Order	\$ 2,950.00

The Monetary Order must be served upon the tenants and it may be filed in Provincial Court (Small Claims) to be enforced as an Order of the court.

Conclusion

The landlords have been provided an Order of Possession effective two (2) days after service upon the tenants.

The landlords have been authorized to retain the security deposit and have been provided a Monetary Order for the balance of \$2,950.00 to serve and enforce as necessary.

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: May 22, 2014

Residential Tenancy Branch

