



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rancho Management Services BC Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent and an Order of Possession for cause; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

At the outset of the hearing the landlord withdrew their application for an Order of Possession for unpaid rent and for a Monetary Order for money owed or compensation for damage or loss.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail on June 09, 2014. Canada Post tracking numbers were provided by the landlord in verbal testimony. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the

tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for cause?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The landlord testified that this tenancy started on October 01, 2012 for an initially fixed term of two months. The tenancy then reverted to a month to month tenancy. Rent for this unit is \$2,250.00 per month and this is due on the 1st day of each month in advance. The tenants paid a security deposit of \$1,125.00 on September 19, 2012.

The landlord testified that the tenants have been continually late paying rent and a One Month Notice to End Tenancy (the Notice) was served upon the tenants on July 17, 2014 by registered mail. This Notice has an effective date of August 31, 2014 and notified the tenants that the reason for this Notice is that the tenants have been continually late paying rent. The landlord has provided a copy of the Notice in documentary evidence.

The landlord testified that the tenants paid rent late in April, 2014. The rent for April was not paid until May 01, 2014. Rent for May was not paid until May 30, 2014 and then only a partial payment was made of \$500.00. Rent for June was not paid until June 23, 2014 when the tenants paid \$4,000.00 for May and June. The landlord testified that to date rent for July has not been paid. The landlord has provided a rent statement for the tenants in documentary evidence. The landlord amends their claim for unpaid rent from \$4,000.00 to \$2,250.00.

The landlord testified that due to the tenants continual actions in paying rent late the landlord seeks an Order of Possession effective on August 31, 2014.

The landlord testified that the tenancy agreement provides for a late fee of \$50.00 to be charged to the tenants for each month that rent is late. The landlord seeks to recover late fees for May, June and July, 2014. A copy of the tenancy agreement has been provided in documentary evidence.

The landlord seeks a Monetary Order to recover the unpaid rent for July less the security deposit of \$1,125.00 as the security deposit is currently held in trust by the landlord. The landlord also seeks to recover the filing fee of \$50.00

Analysis

The tenants did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlord's documentary evidence and sworn testimony before me. I refer the parties to s. 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied with the evidence before me that the tenants have failed to pay rent on time on at least three occasions. The *Act* provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. Three late payments are the minimum number sufficient to justify a notice under these provisions. Consequently, I am satisfied that the landlord is entitled to an Order of Possession pursuant to s. 55 of the *Act*. As the Notice has an effective date of August 31, 2014 the Order of Possession will become effective on that date.

I am satisfied with the landlord's amended claim for unpaid rent for July, 2014 of \$2,250.00. The landlord is therefore entitled to recover this amount from the tenants and a Monetary Order has been issued pursuant to s. 67 of the *Act*.

A landlord may charge a fee for late payment of rent where the tenancy agreement provides for that fee in accordance with s. 7(2) of the Residential Tenancy Regulations. I have reviewed the tenancy agreement provided in evidence by the landlord and find the tenancy agreement does provide for a late fee to be charged of \$50.00; However, s. 7(1)(d) of the Regulations states that subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent may be charged. Consequently, I find the landlord is entitled to recover \$25.00 per month for late fees for May, June and July, 2014. A Monetary Order has been issued to the landlord for \$75.00 pursuant to s. 67 of the *Act*.

I Order the landlord to retain the tenants' security deposit of \$1,125.00 pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the landlord's monetary award.

I further find the landlord is entitled to recover the filing fee of \$50.00 pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent for July, 2014	\$2,250.00
Late fees	\$75.00
Filing fee	\$50.00
Less security deposit	(-\$1,125.00)
Total amount due to the landlord	\$1,250.00

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,250.00**. The Order must be served on the respondents and is enforceable through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on August 31, 2014. This Order must be served on the respondents and may be filed in the Supreme Court and enforced as an Order 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: July 28, 2014

Residential Tenancy Branch

