



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Li-Car Management Group
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, 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;
- authorization to retain all or a portion of the tenants' pet damage and security deposits in partial satisfaction of the monetary order requested pursuant to section 38; 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 11:13 a.m. in order to enable them to connect with this teleconference hearing scheduled for 11:00 a.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 gave sworn testimony that he posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on June 5, 2014. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on June 8, 2014, the third day after the posting of this Notice on the tenants' door.

Landlord Representative LP (the landlord) testified that the landlord sent copies of the landlord's dispute resolution hearing package to both tenants on June 20, 2014. The landlord entered into written evidence copies of the Canada Post Tracking Numbers and Customer Receipts to confirm these registered mailings. She testified that neither package was picked up by the tenants and the hearing packages have been returned to the landlord. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with copies of the landlord's dispute resolution hearing package on June 25, 2014, the fifth day after their registered mailing.

At the hearing, the landlord testified that since the 10 Day Notice was issued, the tenants have made payments of \$700.00 on June 25, 2014, of \$200.00 on June 29, 2014, and \$1,000.00 on July 31, 2014. She testified that receipts for “use and occupancy only” were provided to the tenants on each occasion when the above payments were accepted by the landlord’s representatives. She requested that the amount of the landlord’s monetary award be reduced from \$3,000.00 to \$400.00 to reflect the above payments and the timing of this hearing.

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 tenant’s security and pet damage 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

On March 3, 2013, the parties signed a periodic Residential Tenancy Agreement (the Agreement), a copy of which was entered into written evidence by the landlord. As of March 1, 2013, when this tenancy started, the monthly rent was set at \$700.00, payable in advance on the first of each month. The landlord continues to hold the tenants’ \$350.00 security deposit paid on February 26, 2013, and the tenants’ \$350.00 pet damage deposit. The pet damage deposit was paid in two installments. The tenants paid \$175.00 of this deposit on April 3, 2013, and the final \$175.00 on May 29, 2013.

The landlord’s 10 Day Notice identified \$900.00 as owing as of June 1, 2014. This amount included \$200.00 in outstanding rent owing from May 2014 and the \$700.00 that became due on June 1, 2014. The landlord’s original application for a monetary award of \$3,000.00 included anticipated loss of rent for July, August and September 2014. As noted above, only \$400.00 remains owing at this time.

Analysis

Based on the landlord’s undisputed evidence, I find that the tenants’ payments since the 10 Day Notice was issued have been accepted for use and occupancy only and not to reinstate this tenancy. The tenants failed to pay the amount identified in the 10 Day Notice in full within five days of being deemed to have received the 10 Day Notice. 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 June 18, 2014. As that has not occurred and the amount paid by the tenants does not entitle them to remain in occupation of the rental unit beyond the date of this hearing, I find that the landlord is entitled to a 2 day Order of Possession. 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 within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the landlord's undisputed sworn testimony and written evidence, I find that \$400.00 remains owing by the tenants to the landlord at this time. For this reason, I issue a monetary award in the landlord's favour which enables the landlord to recover any unpaid rent owing as of this time. I also allow the landlord to recover the \$50.00 filing fee from the tenants.

In order to implement the monetary award issued in the landlord's favour, I allow the landlord to retain the tenants' \$350.00 security deposit. I also allow the landlord to retain \$100.00 from the tenants' pet damage deposit. The remaining value of the tenants' pet damage deposit is reduced from \$350.00 to \$250.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). 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 \$450.00, which enables the landlord to recover \$400.00 in unpaid rent owing as of August 1, 2014, and the \$50.00 filing fee from the tenants. In order to implement this monetary award, I order the landlord to retain the tenants' \$350.00 security deposit as well as \$100.00 from the tenants' pet damage deposit. The tenant's pet damage deposit is hereby reduced to \$250.00. 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: August 18, 2014

Residential Tenancy Branch

