



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAKOLA RNH MOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent and to recover the filing fee for the Application.

L.A. appeared as agent for the Landlord. S.A. appeared on behalf of both Tenants. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

The Landlord submitted in evidence a copy of the tenancy agreement which began October 1, 2011. The original amount of rent was \$458.30 and was based on the British Columbia Housing Management commission Rent Geared to Income/Market Rent Cap. The parties agreed that the current amount of rent was \$519.00 and that \$519.00 was the amount of rent payable from March 2013 to the present.

The Landlord submitted a Monetary Order Worksheet as well as a Tenant Ledger Card indicating the Tenants owed \$2,128.00 in rent. The Tenant confirmed that she had reviewed the Tenant Ledger Card and agreed with the evidence contained therein. A review of the Tenant Ledger Card confirms that the Tenants began missing monthly rent payments in April 2013 and while they continued to make some payments, they were often late, missed several months at a time, and carried an outstanding balance from July 2013 to August 2014.

On March 25, 2014 the Landlord obtained an Order of Possession as well as a Monetary Order in the amount of \$2,933.00. The Landlord further noted that after obtaining the Order of Possession the Tenants promised to pay but after one payment stopped.

Based on the testimony of L.A., I find that the Tenants were served with a 10 day Notice to End Tenancy for non-payment of rent on July 28, 2014 by posting to the rental unit door. The Notice indicated the Tenants owed \$2,128.00 in rent as of July 1, 2014 (the "Notice"). Section 90 of the Act provides that documents served in this manner are deemed served three days later. Accordingly I find the Tenants were served as of July 31, 2014.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely August 5, 2014. The Notice also explains the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenants have not paid the outstanding rent and did not apply to dispute the Notice 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.

Under section 26 of the Act, the Tenants must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenants have some authority under the Act to not pay rent. In this situation the Tenants had no authority under the Act to not pay rent.

I find that the Landlord is entitled to an order of possession effective **1:00 p.m. on September 30, 2014**, the date agreed to by the parties. This order may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord sought a Monetary Order for the \$2,128.00 in outstanding rent as well as an additional month of rent in the amount of \$519.00 for a total of \$2,647.00 in outstanding rent. I find that the Landlord has established a total monetary claim of \$2,697.00 comprised of \$2,647.00 in outstanding rent and the \$50.00 fee paid by the Landlord for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an order of possession effective September 30, 2014 at 1:00 p.m. and is granted a Monetary Order in the amount of \$2,697.00.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: September 23, 2014

Residential Tenancy Branch

