



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Preliminary Issues

Upon review of the Landlord's application for Dispute Resolution the Landlord indicated that they had made a clerical error in checking off the box to keep all or part of pet damage deposit or security deposit because the Tenants were not required to pay any deposits and none were collected.

Based on the above, the application was amended to remove the request to keep all or part of pet damage deposit or security deposit, pursuant to section 64 of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 8, 2014, by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The Landlord submitted affirmed testimony that indicated each Tenant was personally served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on July 14, 2014 at 5:07 p.m. Based on the submissions of the Landlord I find each Tenant was sufficiently served notice of this proceeding, in accordance with section 89 of the Act. Therefore, I proceeded in the Tenants' absence.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted evidence that the Tenants entered into a month to month tenancy that commenced on September 1, 2012. The Tenants were required to pay rent of \$679.00 on the first of each month.

The Landlord testified that on May 13, 2014 the Tenants were served a 10 Day Notice for \$1,637.00 in unpaid rent, by regular mail, as provided in their documentary evidence. Since that date the Tenants have only made three payments towards the rental arrears as follows: \$999.00 paid May 27, 2014; \$500.00 pay July 4, 2014; and \$1,000.00 paid August 6, 2014. The Landlord argued that the Tenants continue to occupy the rental unit and now have an accumulated balance owing for rent of \$1,854.00. Therefore, they are seeking an Order of Possession and a monetary Order for the unpaid rent.

The Landlord submitted documentary evidence that they had paid to have bed bug treatments completed in the Tenants' rental unit. The Tenants were provided the opportunity to have a consultation with the pest control company and the Tenants elected to purchase bed mattress covers from the pest control company. Shortly after the covers were installed, one had been destroyed, due to the Tenants' neglect, as noted on the pest control invoice provided in evidence. As a result the Landlord has filed seeking to recover the cost of the bed cover in the amount of \$65.00.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenants who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their evidence.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenants are deemed to have received the 10 Day Notice on May 18, 2014, five days after it was mailed, and the effective date of the Notice is **May 28, 2014**, in accordance with section 90 of the Act.

The evidence supports that the Tenants did not pay the full amount owed within the required five day period; rather, they waited until May 27, 2014, before making a partial payment. Therefore, as full payment was not made I find the Tenants were conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

As noted above this tenancy ended **May 28, 2014**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking the outstanding balance of \$1,854.00 as money for use and occupancy of the unit for June, July, August and September 2014, not rent.

The Tenants are still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession. The Landlord is required to mitigate their loss and work to find replacement tenants as soon as possible. Therefore,

I find the Landlord is entitled to use and occupancy and any loss of rent for the period of June 1, 2014 to September 30, 2014 for a total amount of **\$1,854.00**.

I accept the Landlords undisputed submission that the Tenants were responsible to pay for the damaged bed mattress cover, which was damaged due to the Tenants' neglect. Accordingly, I award the Landlord **\$65.00**.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days after service upon the Tenants**. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order in the amount of **\$1,969.00** (\$1,854.00 + \$65.00 + \$50.00). This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims 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: September 11, 2014

Residential Tenancy Branch

