



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTRAL PACIFIC REALTY LTD AND VANCOUVER EVICTION
SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, 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; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's 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 tenant for the cost of this application.

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 August 30, 2014. Canada Post tracking numbers were provided by the landlord in documentary evidence. 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's agent 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*.

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover rent owed?
- Is the landlord entitled to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord's agent testified that this fixed term tenancy started on April 01, 2014 and is not due to expire until March 31, 2015. Rent for this unit is \$995.00 per month and is due on the 1st day of each month. The tenants paid a security deposit of \$497.50 on March 25, 2014.

The landlord's agent testified that the tenants failed to pay the rent for August, 2014. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on August 02, 2014. This was posted on the tenants' door and was deemed to have been served three days after posting. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on August 12, 2014. The tenants failed to pay the outstanding rent within the five allowable days. Since that time the tenants have failed to pay rent for September, 2014. The total amount of unpaid rent is now \$1,990.00.

The landlord's agent testified that the tenancy agreement contains an amendment in which the parties agreed that there would be a late fee of \$25.00 per month charged for any month that rent is late. The landlord seeks to recover late fees for August and September, 2014 of \$50.00.

The landlord's agent withdrew their claim for a loss of revenue for October, 2014.

The landlord has applied to retain the tenants' security deposit in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

Analysis

The tenants did not appear at the hearing, despite having been given a Notice of the hearing; 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.

Therefore, having considered the undisputed evidence before me, I am satisfied that there is outstanding rent for August and September, 2014 of \$1,990.00. Consequently, the landlord is entitled to a monetary award to recover this amount.

With regard to the landlord's claim for late fees; 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 which state 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.

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 \$25.00.

Consequently, I find the landlord is entitled to recover \$50.00 for late fees for August and September, 2014.

I order the landlord, pursuant to s. 38(4)(b) of the *Act*, to keep the tenants' security deposit of \$497.50 in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding.

The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent and late fees	\$2,040.00
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$497.50)
Total amount due to the landlord	\$1,592.50

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted on the tenants' door it was deemed served three days after posting on August 05, 2014, and the effective date of the Notice is amended to August 15, 2014 pursuant to s. 53 of the *Act*. The tenants did not pay all the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I grant the landlord an Order of Possession for two days after service upon the tenants pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,592.50** pursuant to

s. 67 and 72(1) of the *Act*. 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 **two days** after service on the tenants. 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: September 12, 2014

Residential Tenancy Branch

