



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, CNR

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants as named above applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;

Both parties were represented at the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant attending this hearing (the tenant) confirmed that the landlord(s) served the tenants with the 10 Day Notice by hand at 4:00 p.m. on September 4, 2014. The tenant confirmed that the tenants were handed a copy of the landlords' dispute resolution hearing package on September 11, 2014. I am satisfied that the landlords served the above documents and the landlords' written evidence to the tenants in accordance with sections 88 and 89 of the *Act*.

The landlord who attended the hearing (the landlord) confirmed that on September 16, 2014, the landlords received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on September 12, 2014. In accordance with sections 89(2) and 90 of the *Act*, I find that the landlords were deemed served with the tenants' dispute resolution hearing package on September 17, 2014, the fifth day after their registered mailing.

Issues(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? Are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy commenced as a one-year fixed term tenancy on July 1, 2013. At the expiration of the initial term, the tenancy continued as a periodic tenancy. Monthly rent is set at \$1,400.00, payable in advance on the first of each month. The landlords continue to hold the tenants' \$700.00 security deposit paid on June 15, 2014.

The landlord gave undisputed sworn oral testimony and written evidence that \$2,290.00 became owing for this tenancy as of July 1, 2014. The landlord provided oral and written evidence that the tenants made six cash payments to the landlords from July 5 until July 30, 2014. Although the landlords did not issue receipts for these cash payments as is required by section 26(2) of the Act, the tenant did not dispute the landlords' account of the amounts paid during July 2014.

The landlords' 10 Day Notice of September 4, 2014 identified \$3,640.00 as owing for this tenancy as of that date. The tenant confirmed that the tenants have not made any further payments to the landlords since July 30, 2014, although the tenants did apply for dispute resolution to cancel the landlords' 10 Day Notice within the five days identified on that Notice. The tenant testified that the tenants are planning to end their tenancy by October 31, 2014.

In addition to their request to end this tenancy on the basis of the 10 Day Notice, the landlords' application for a monetary award of \$5,030.00 included the following items:

Item	Amount
Unpaid Rent Owing as of July 2, 2014	\$2,290.00
Less Tenants' Payments of July 5, 11, 19, 25, 26 and 30, 2014 (\$160.00 + \$100.00 + \$200.00 + \$ 260.00 + \$500.00 + \$400.00 = \$1,620.00)	-1,620.00
Unpaid Rent August 2014	1,400.00
Unpaid Rent September 2014	1,400.00
Unpaid Rent October 2014	1,400.00
Recovery of Filing Fee for this Application	100.00
Total of Above Items	\$4,970.00

Analysis

The tenants failed to pay the rent identified as owing in the 10 Day Notice in full within five days of receiving the 10 Day Notice. Although the tenants applied to cancel that Notice within five days of receiving, I find that the tenants have not fulfilled their obligations as required under their tenancy agreement to pay their rent when it was due. The tenant testified that the tenants plan to vacate the rental unit on October 31, 2014. As the tenants have not presented any valid reason to enable them to have withheld their rent from the landlords, I find that the landlords are entitled to an Order of Possession to take effect by 1:00 p.m. on October 31, 2014. The tenants' application is dismissed without leave to reapply. The landlords will be given a formal Order of Possession which must be served on the tenant(s). If the tenant(s) do not vacate the rental unit by that time and date, the landlords may enforce this Order in the Supreme Court of British Columbia.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Although the amounts owing and the payments received from the tenants do not total the \$5,030.00 claimed as owing, I find that the landlords have demonstrated that they are entitled to a monetary award for the difference between the amounts owing and the amounts paid during this tenancy. For this reason, I issue a monetary award in the landlords' favour in the amount of \$2,290.00 for rent owing as of July 2, 2014, \$1,400.00 for each of August, September and October 2014, less the \$1,620.00 identified as paid during the month of July 2014 by the tenants.

Although the landlords' application does not seek to retain the security deposit for this tenancy, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Although the landlords were successful in this application and entitled to recover the filing fee for the landlords' application, I find that an apparent mathematical error of the landlords led to the landlords' payment of a \$100.00 filing fee instead of the \$50.00 filing fee that would have been required had the landlords properly calculated the tenants' rental payments during July 2014. As such, I allow the landlords to recover only \$50.00 of their filing fee for their application.

Conclusion

The landlords are provided with a formal copy of an Order of Possession effective at 1:00 p.m. on October 31, 2014. 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 Order in the landlords' favour under the following terms, which allows the landlords to recover unpaid rent and their filing fee and to retain the tenants' security deposit:

Item	Amount
Unpaid Rent Owing as of July 2, 2014	\$2,290.00
Less Tenants' Payments of July 5, 11, 19, 25, 26 and 30, 2014 (\$160.00 + \$100.00 + \$200.00 + \$ 260.00 + \$500.00 + \$400.00 = \$1,620.00)	-1,620.00
Unpaid Rent August 2014	1,400.00
Unpaid Rent September 2014	1,400.00
Unpaid Rent October 2014	1,400.00
Less Security Deposit	-700.00
Landlords' Recovery of Partial Filing Fee for their Application	50.00
Total Monetary Order	\$4,220.00

The landlords are provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The tenants' application is dismissed without leave to reapply.

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: October 29, 2014

Residential Tenancy Branch

