



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the “Act”) for orders as follows:

1. an order of possession for unpaid rent pursuant to section 55;
2. a monetary order for unpaid rent and late fees pursuant to section 67;
3. an order to be allowed to keep all or part of the security deposit pursuant to section 38; and
4. to recover the filing fee from the tenant for the landlord’s cost of this application pursuant to section 72.

The tenant did not appear, although I waited until 1315 in order to enable the tenant to connect with this teleconference hearing scheduled for 1300. The landlord’s agent appeared. The landlord was given full opportunity to be heard, to present sworn evidence and to make submissions.

The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was served to the tenants on 8 August 2014 by posting the notice on the tenants’ door. The landlord gave sworn testimony that and provided a Canada Post customer receipt that proves that she served the tenants with the Application for Dispute Resolution hearing package on 30 August 2014 by registered mail. I accept that the tenants were duly served with the 10 Day Notice and the Application for Dispute Resolution hearing package.

At the hearing, the landlord asked to amend this application to include unpaid rent for September and October. As the tenants reasonably ought to have known that these amounts were owed, I have allowed the amendment as there is no prejudice to the tenants.

Issue(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 tenants' security deposit 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

While I have turned my mind to all the documentary evidence and the testimony of the landlord, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

The landlord provided sworn and uncontested testimony that the tenants are still occupying and in possession of the rental unit. The landlord testified that, in addition to outstanding rent claimed on her initial application, she did not collect any rent from the tenants for September 2014 or October 2014.

The landlord provided a copy of the original tenancy agreement. The agreement, executed 7 March 2012, is in respect of a tenancy commencing 1 April 2012 for monthly rent of \$785.00. The tenancy agreement indicates that a security deposit of \$392.50 was due in advance. The tenant GB is noted as a tenant and the tenant KZ is noted as an occupant in the agreement; however, both GB and KZ executed the agreement as tenants. Accordingly I find that both GB and KZ are properly named as tenants in this application.

The landlord provided uncontested sworn testimony that notices of rent increase were properly issued for the years 2013 and 2014 and that rent was currently \$831.00 per month, which is within the prescribed allowable rent increases. I accept that these rent increases were properly issued and that, for the period at issue, rent was payable at a monthly rate of \$831.00.

The landlord issued the 10 Day Notice for \$912.00 in outstanding rent from July and August 2014. The landlord delivered the 10 Day Notice to the tenants on 8 August 2014 by posting it on the tenants' door. The landlord testified that the tenants did not pay the outstanding rent after receiving the 10 Day Notice.

The landlord has applied for an order of possession for non-payment of rent for the months of July 2014 to October 2014. The landlord seeks a monetary award of

\$2,231.50: unpaid rent from the months of July 2014 through October 2014, inclusive, less the tenants' security deposit of \$392.50.

Analysis

I have reviewed all documentary evidence and accept the tenants have been deemed served with 10 Day Notice as declared by the landlord on 11 August 2014. The effective date of possession is corrected to 21 August 2014.

I accept the landlord's evidence that there is \$912.00 of unpaid rent outstanding from July and August. I accept that the landlord is entitled to a monthly rent of \$831.00 for each of September and October.

The tenants failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenants have not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 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 21 August 2014. As that has not occurred, 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.

The landlord applied to keep the tenants' security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

Pursuant to section 55 of the Act, 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.

Pursuant to section 67 of the Act, I find that the landlord is entitled to a monetary order in the amount of \$2,231.50 composed as follows:

Item	Amount
Unpaid Rent From 10 Day Notice	912.00
Unpaid Rent September 2014	831.00
Unpaid Rent October 2014	831.00
Less Security Deposit	-392.50
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$2,231.50

The landlord is provided with this order 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 this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: October 27, 2014

Residential Tenancy Branch

