



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPC, OPR, MND, MNDC, MNR, O, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord.

The landlord provided documentary evidence that the tenants were served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on October 18, 2014 in accordance with Section 89. As per Section 90, the documents are deemed received by each tenant on the 5th day after it was mailed.

In addition, the tenants have provided a substantial volume of documentary evidence, including signed statements from both tenants prior to the hearing and received by the Residential Tenancy Branch on October 22, 2014.

Based on the testimony of the landlord and the submission of their evidence by the tenants, I find that each tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for breach of an agreement; for cause; or for unpaid rent; to a monetary order for unpaid rent; for damage to the rental unit; for compensation; for all or part of the security deposit and to recover the filing fee for this Application, pursuant to Sections 37, 38, 44, 46, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement for the tenancy that began on May 1, 2014 as a 1 year fixed term tenancy for the monthly rent of \$1,350.00 due on the 1st of each month. The landlord holds a security deposit of \$675.00.

Both parties provided a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on August 1, 2014 with an effective vacancy date of September 30, 2014 citing the tenants or a person permitted on the property by the tenants has significantly interfered with our unreasonably disturbed another occupant or the landlord of the residential property; the tenants have breached a material term of the tenancy and failed to correct the breach after receipt of a written notice to do so; and the tenants have not paid a pet damage deposit within 30 days of the date it was required.

The landlord submitted a proof of service document confirming that she served the tenants with this Notice by registered mail on August 5, 2014.

The landlord seeks a monetary order for the following items:

Description	Amount
Pet Damage Deposit	\$675.00
Registered Mail charges (Notice to End Tenancy)	\$10.50
Unpaid Rent – 2014 June	\$250.00
Unpaid Rent – email transfer deductions (\$1.50 per transaction)	\$4.50
Painting – tenant's failure to complete	\$200.00
Total	\$1,140.00

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- b) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, or
- c) The tenant
 - i. Has failed to comply with a material term, and
 - ii. Has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Section 47(4) of the *Act* allows a tenant to dispute a notice to end tenancy under Section 47 within 10 days after the date the tenant receives the notice. Section 47(5) states that if a tenant does not submit an Application for Dispute Resolution seeking to dispute the notice within 10 days the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the notice and must vacate the rental unit by that date.

As there is no evidence before me that the tenants filed an Application for Dispute Resolution seeking to cancel the 1 Month Notice to End Tenancy for Cause issued by the landlord on August 1, 2014 I find the tenants are conclusively presumed to have accepted that the tenancy ended in accordance with the Notice and they must vacate the rental unit.

As to the landlord's monetary claim to receive a pet damage deposit I find that since I have found that the tenancy has ended it is moot to require the tenants to pay a pet damage deposit. I note that this decision does not preclude the landlord from filing a claim for damage cause by any pets in the rental unit under a future Application for Dispute Resolution.

In relation to the landlord's claim for registered mail charges to use registered mail to serve the tenants with the 1 Month Notice to End Tenancy I find that these charges are a cost of doing business and are a choice made by the landlord. As such, these charges are not recoverable under the *Act*.

As to the landlord's claim to recover funds she paid to the tenants for painting, I find that this is a contract for work that is outside of the scope of the tenancy agreement. As such, I decline jurisdiction on this matter. I note that the landlord is at liberty to pursue this claim for a court of competent jurisdiction.

As to the landlord's claims for unpaid rent for the month of June 2014 and for three email transfer charges that the tenants unilaterally deducted from their rent payment, I find the landlord's undisputed testimony and evidence supports her claim in the amount of \$254.50.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply

with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$304.50**, comprised of \$254.50 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct this amount from the security deposit held in the amount of \$675.00 in satisfaction of this claim. This leaves a balance of \$370.50 in the security deposit that must be dispersed in accordance with the requirements of the *Act* at the end of the tenancy.

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: November 26, 2014

Residential Tenancy Branch

