



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Homelife Glenayre Realty Chilliwack LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDS, ET, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, for an order ending the tenancy early, and to recover the filing fee from the tenants for the cost of the application.

An agent for the landlord company attended the hearing, gave affirmed testimony and provided evidentiary material prior to the commencement of the hearing to the Residential Tenancy Branch and to the tenants. However, despite being served with the Application for Direct Request, notice of hearing and evidentiary material by registered mail on December 5, 2014, no one for the tenants attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and the only participant who joined the call was the landlord's agent. The landlord's agent testified that the tenants were individually served in that manner and on that date and has provided copies of the Canada Post receipts containing the tracking numbers assigned by Canada Post, and I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established that the tenancy should end earlier than a notice to end the tenancy would take effect?
- Has the landlord established a monetary claim as against the tenants for unpaid rent?

- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that the landlord had originally filed an Application for Direct Request, and the Arbitrator who considered it referred the matter to a participatory hearing. The application was filed on November 28, 2014 and a Notice of a Dispute Resolution Hearing was provided by the Residential Tenancy Branch for service on the tenants on December 5, 2014.

The landlord's agent further testified that this month-to-month tenancy began on August 1, 2014. Rent in the amount of \$720.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy the tenants paid a security deposit in the amount of \$360.00 which is still held in trust by the landlord and no pet damage deposit was collected. A copy of the tenancy agreement has been provided.

The landlord's agent further testified that the tenants have fallen into arrears of rent the sum of \$2,960.00 which includes a \$20.00 late fee, although the tenancy agreement does not specify late fees. The landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 16, 2014 by posting it to the door of the rental unit. A copy of page 1 of the 2-page notice has been provided, and it is dated September 16, 2014 and contains an expected date of vacancy of September 30, 2014 for unpaid rent in the amount of \$1,020.00 that was due on September 1, 2014. The landlord's agent testified that both pages of the 2-page form were served, and has provided a witness statement from a person who saw the landlord serve the notice. The landlord has not been served with an application by either tenant disputing the notice.

The landlord's evidentiary material also contains a statement of account for the rental unit which shows that effective August 29, 2014 the tenants were in arrears of rent the sum of \$500.00, the tenants fell further into arrears the sum of \$500.00 on September 1, 2014, and another \$500.00 on October 1, 2014 and no rent was paid for November, 2014. The tenants have not paid any rent since October, 2014. The landlord issued receipts that were marked with a notation that the money paid in October was being accepted for rental arrears and did not serve to reinstate the tenancy, however copies have not been provided.

The landlord seeks an Order of Possession, a monetary order in the amount of \$2,960.00, an order permitting the landlord to keep the security deposit, and to recover the filing fee.

Analysis

The *Residential Tenancy Act* states that if a tenant does not pay the rent in full or dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities within 5 days of receipt, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. In this case, the landlord's agent testified that the tenants were served on September 16, 2014 by posting both pages of the 2-page notice to the door of the rental unit, and I accept that testimony. The tenants have not disputed the notice and have not paid the rent and therefore I find that the tenants are conclusively presumed to have accepted the end of the tenancy, and the landlord is entitled to an Order of Possession on 2 days notice to the tenants.

With respect to the landlord's monetary claim, I accept the testimony of the landlord's agent that the tenants were in arrears of rent the sum of \$500.00 for August, \$500.00 for September, \$500.00 for October, 2014 and paid no rent for November leaving an additional balance of \$720.00. The landlord's agent testified that no rent has been paid since the issuance of the notice to end the tenancy issued on September 16, 2014, and the landlord is entitled to rent for the month of December, 2014. I find that the landlord has established a monetary claim as against the tenants for unpaid rent in the amount of \$2,940.00.

A landlord is permitted to charge a late fee for late rent payments not to exceed \$25.00 only if the tenancy agreement contains such a clause. In this case the tenancy agreement is silent with respect to late fees and I find that the landlord is not entitled to the \$20.00 claim.

With respect to the landlord's request for an order ending the tenancy early, I dismiss that portion of the landlord's application. That application is intended for situations where a landlord has not issued a notice to end the tenancy.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

I hereby order the landlord to keep the \$360.00 security deposit in partial satisfaction of the claim, and I grant the landlord a monetary order for the difference in the amount of \$2,630.00.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenants.

I further order the landlord to keep the \$360.00 security deposit and I grant a monetary order in favour of the landlord as against the tenants, pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,630.00.

These orders are final and binding and may be enforced.

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: January 08, 2015

Residential Tenancy Branch

