



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bakonyi Holding's Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, FF

Introduction

This hearing dealt with the landlords' 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 and both tenants.

The landlord testified that he has submitted evidence to the Residential Tenancy Branch when he filed his Application for Dispute Resolution, however, there was no evidence in the file. Specifically there were no copies of either a 10 Day Notice to End Tenancy for Unpaid Rent or a 1 Month Notice to End Tenancy for Cause.

The female tenant confirmed that she had received the landlord's evidence although she did not have any of the evidence in front of her during the hearing and could not refer to any of its content.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to an order of possession for unpaid rent and/or for cause; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began on January 17, 2014 as a 1 year fixed term tenancy that converted to a month to month tenancy on February 1, 2015 for the monthly rent of \$775.00 due on the last day of each month with a security deposit of \$362.50 paid. The parties also agreed that the tenancy agreement contained a clause that the tenant would pay a \$25.00 fee for late payment of rent.

The parties agree that the tenants have not paid any rent for the months of February, March, and April 2015. The tenant submits that she has not paid the rent because the

rental unit is infested with bedbugs and the landlord refuses to correct the situation without payment of rent.

The landlord testified that he issued a 10 Day Notice to End Tenancy for Unpaid Rent on March 5, 2015 with an effective date of March 10, 2015 indicating the amount owed was \$1,600.00 for the months of February and March 2015. The landlord testified that he served the Notice to the tenant in person on March 5, 2015.

The tenant testified that the landlord did not give the tenants a copy of the Notice until they asked for it. While the tenant was not sure of the specific date she believed she received it on March 13, 2015 and that the effective date was March 23, 2015.

The landlord testified that he issued a 1 Month Notice to End Tenancy for Cause on March 23, 2015 to be effective April 23, 2015 and that it was issued for repeated late payment of rent. The female tenant testified she never received a 1 Month Notice.

Analysis

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

Section 46(4) allows the tenant to either pay the rent or file an Application for Dispute Resolution to dispute the notice within 5 days of receipt of the notice.

Section 46(5) states that if a tenant who has received a notice under this section does not pay the rent or make an Application for Dispute Resolution to dispute the notice within the allowed 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

As there is no evidence before me that the tenants had submitted an Application for Dispute Resolution to dispute the 10 Day Notice and the female tenant confirmed that they had not paid rent for the months of February and March 2015 I find the tenants are conclusively presumed to have accepted that the tenancy has ended and they must vacate the rental unit.

I also find, based on the testimony of both parties, that the tenants have failed to pay rent and late fees for the months of February, March and April 2015.

As I have determined that the 10 Day Notice to End Tenancy to be valid and the tenancy has ended I make no rulings or findings of fact on the 1 Month Notice to End Tenancy for Cause.

Conclusion

I find the landlords are 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 landlords may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,450.00** comprised of \$2,325.00 rent owed; \$75.00 late fees and the \$50.00 fee paid by the landlords for this application.

I order the landlords may deduct the security deposit and interest held in the amount of \$362.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,087.50**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order in the Provincial Court (Small Claims) and be 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: April 22, 2015

Residential Tenancy Branch

