



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled to deal with cross applications. The tenant had applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord had applied for an Order of Possession and Monetary Order for unpaid rent. Only the landlord appeared at the hearing.

The landlord confirmed that he was served with the tenant's Application. Since the landlord appeared at the hearing and the tenant(s) failed to appear so as to present a basis for cancellation of the 10 Day Notice I dismissed the tenant's Application.

The landlord testified that he personally served each tenant with the landlord's hearing package on March 17, 2015 when they came to the door of his residence. The service was witnessed by the landlord's wife. I was satisfied the tenants have been served with the landlord's hearing documents and I continued to hear from the landlord without the tenants present.

The landlord requested that his claim be amended to include authorization to retain the security deposit in partial satisfaction of the rent that is owed to him. I found his request to be non-prejudicial to the tenants since the amendment would reduce any Monetary Order given to the landlord and I have amended the landlord's application accordingly.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent?
3. Is the landlord authorized to retain the tenants' security deposit?

Background and Evidence

The one year fixed term tenancy commenced February 1, 2015 and the tenants paid a security deposit of \$500.00. The tenants are required to pay rent of \$950.00 on the 1st day of every month. On February 28, 2015 the tenants paid \$70.00 toward the rent due for March 2015 leaving a balance outstanding of \$880.00. The landlord personally served the female tenant a

10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on March 6, 2015. The 10 Day Notice indicates the tenants failed to pay rent of \$950.00 that was due on March 1, 2015 and provides for a vacancy date of March 17, 2015.

The tenant filed to dispute the Notice on March 10, 2015 but in doing so did not provide any basis for cancelling the Notice. In any event, the tenant's application was dismissed as provided in the Introduction section of this decision.

The landlord testified that after filing his Application the tenants presented him partial payments, in cash, for which he issued receipts indicating he was accepting the monies for "occupancy" only. The landlord also testified that had a conversation with the female tenant whereby he agreed to permit the tenants occupancy of the unit until the end of April 2015.

The payments received from the tenants after the landlord's Application was filed are as follows:

March 21, 2015	\$180.00
March 28, 2015	500.00
April 4, 2015	<u>200.00</u>
Applied to March arrears	\$880.00

April 11, 2015	\$280.00
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The landlord requested an Order of Possession effective April 30, 2015 and monetary compensation for the balance of rent owing for April 2015 by way of the security deposit and a Monetary Order.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay all of the rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution.

In this case, the tenant filed to dispute the Notice but did not provide a basis for cancelling the Notice and the tenant's application was dismissed.

I accept the undisputed evidence before me that the tenants failed to pay the rent that was due to the landlord on March 1, 2015 and I uphold the Notice that was served upon the tenants on

March 6, 2015. Therefore, I find the tenancy legally ended on the stated effective date of March 17, 2015.

I am satisfied that the partial payments made by the tenants after March 17, 2015 did not reinstate the tenancy based upon the receipts issued to the tenants and the landlord's discussion with the tenants that he was permitting them occupancy only until April 30, 2015. Therefore, I grant the landlord's request for an Order of Possession effective April 30, 2015. The Order of Possession must be served upon the tenants and it may be enforced in the Supreme Court of British Columbia if necessary.

After taking into account all of the tenants' partial payments I find that the landlord is entitled to recover loss of rent for April 2015 in the amount of \$670.00 [\$950.00 – \$280.00 partial payment on April 11, 2015]. I authorize the landlord to retain the tenants' \$500.00 security deposit in partial satisfaction of this amount and I provide the landlord with a Monetary Order for the balance of \$170.00 to serve and enforce as necessary.

The landlord did not request recovery of the filing fee and I make no award for such.

Conclusion

The landlord has been provided an Order of Possession effective April 30, 2015 to serve upon the tenants.

The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$170.00 to serve upon the tenants.

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 15, 2015

Residential Tenancy Branch

