



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on June 20, 2015 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant via registered mail at the address noted on the Application. A Canada Post tracking number was provided as evidence of service to each tenant.

These documents are deemed to have been served effective June 25, 2015 in accordance with section 89 and 90 of the Act; however neither tenant appeared at the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the security deposit paid by the tenants?

Background and Evidence

The tenancy commenced on July 1, 2012. Subsidized rent is currently \$1,564.00 due on the first day of each month. A security deposit in the sum of \$738.00 was paid. A copy of the signed tenancy agreement was supplied as evidence.

The landlord stated that on June 5, 2015 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of June 15, 2015, was served by posting to the door. Service occurred late in the afternoon.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$3,166.72 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The landlord supplied a copy of a ledger that showed the tenants have not had a zero balance owed since the start of the tenancy. Since the Notice was issued the tenants have made three payments; June 12, July 6 and July 10, 2015 (\$400.00, \$870.00, \$870.00) respectively. Each time a payment has been made the tenants have been given a receipt for use and occupancy only.

On July 10, 2015 the landlord spoke with the tenants and told them the hearing was proceeding.

To July 2015 inclusive the tenants currently owe \$2,160.72 rent.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the 3rd day after it is posted. Therefore, I find that the tenants received the Notice to end tenancy effective June 8, 2015.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenants are deemed to have received this Notice on June 8, 2015, I find that the earliest effective date of the Notice is June 18, 2015.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was June 18, 2015.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice ending tenancy that required the tenants to vacate the rental unit on June 18, 2015, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I find that the tenants failed to pay the total amount of rent owed with five days of June 8, 2015. There was no evidence before me the tenants disputed the Notice. Therefore, pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended on the effective date of the Notice; June 18, 2015.

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$2,160.72 between June 2012 and July 2015 and that the landlord is entitled to compensation in that amount. I have taken into account the ledger and the recent payments made by the tenants.

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the \$738.00 security deposit in partial satisfaction of the claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,372.72. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The landlord has been granted an Order of Possession that is effective two days after service to the tenants. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The landlord is entitled to an Order of possession and monetary Order for unpaid rent.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 13, 2015

Residential Tenancy Branch

