



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAN CHU WONG
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on June 4, 2015. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties represented.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on May 1, 2012 as a 1 year fixed term tenancy and has been renewed on a yearly basis with the last tenancy agreement starting on May 1, 2015 and expiring on April 30, 2016. Rent is \$2,405.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$1,125.00 on April 20, 2012.

The Landlord said that the Tenants have been late on the rent payments many times and the rent arrears are now \$7,615.00. The Landlord issued a 10 Day Notice to End Tenancy for Unpaid rent dated May 5, 2015 and a 1 Month Notice to End Tenancy for Cause dated March 13, 2015 with an effective vacancy date of April 30, 2015. The reason on the 1 Month Notice is repeatedly late on rent payments. The Landlord submitted the Tenants payment ledger which shows the Tenants have not paid the rent on time for over 1 year. The Landlord said because of the unpaid rent and broken promises the Landlord has lost confidence that the Tenants will pay the rent arrears.

The Landlord said they would consider continuing the tenancy if the Tenants paid the unpaid rent and made their monthly rent payments on time. The Landlord said he is not confident this will happen so he is requesting an Order of Possession and a monetary order for \$7,615.00 of unpaid rent.

The Tenant S.H. said she was unaware the rent was not paid and so this is a big surprise to her. She said the occupant J.D. was taking care of the rent payments. Occupant J.D. said that he does not disagree with the Landlord that there is \$7,615.00 in unpaid rent and that the rent payments have been late many times. The occupant J.D. said it is his fault this happened and he hopes they can work this situation out with the Landlord and continue the tenancy. The occupant J.D. said he has \$3,200.00 that he can pay today or tomorrow and he wants to continue the tenancy.

The Landlord said in closing that he is will to consider continuing the tenancy but the unpaid rent must be paid and if the tenancy continues the rent has to be paid on time.

The Tenants said in closing they were sorry this situation happened and they would like to continue the tenancy.

Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Policy guideline 38 says three late payments are the minimum number sufficient to justify a notice under these provisions. It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late.

The Tenants have been repeatedly late on rent payments and there it was agreed by both parties that there is \$7,615.00 in unpaid rent. . Consequently, I find pursuant to s. 55 of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenants.

I also find that the Landlord is entitled to recover unpaid rent in the amount of \$7,615.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenants the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit in partial payment of

the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$7,615.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$7,715.00
Less:	Security Deposit	\$1,125.00	
	Subtotal:		\$1,125.00
	Balance Owing		\$6,590.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$6,590.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: July 22, 2015

Residential Tenancy Branch

