



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTRAL VALLEY PROPERTY MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlords to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail on June 03, 2015. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agent (the landlord) appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

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?
- Is the landlord permitted to keep the tenants' security deposit?

Background and Evidence

The landlord testified that this tenancy started on October 01, 2012 for a fixed term tenancy of one year. The tenancy has since reverted to a month to month tenancy. Rent for this unit is now \$1,425.00 per month and is due on the first day of each month. The tenants paid a security deposit of \$697.50 on September 14, 2012.

The landlord testified that the tenants failed to pay all the rent due for August, September, October, and December, 2014 and for February and May, 2015. A total amount of \$3,810.00 was outstanding. A 10 Day Notice to End Tenancy for unpaid rent (the Notice) was served upon the tenants on May 21, 2015, 2015 by posting it to the tenants' door. The landlord has provided a copy of the Notice in evidence and the Notice has an effective date of June 03, 2015 and states that \$3,810.00 is outstanding. The landlord testified that the tenants failed to pay the outstanding rent within five days of receiving the Notice. No rent was received for June or July making the outstanding rent \$6,660.00; however, the tenants paid \$1,500.00 on July 17, 2015. As the landlord only received the tenants' money order on Friday; the landlord will be issuing the tenants with a letter informing them that the landlord has accepted this amount for use and occupancy only and is not reinstating the tenancy. The total amount of unpaid rent is now \$5,160.00. The landlord seeks to amend their application to include the additional rent owed for June, 2015

The landlord seeks an Order to keep the security deposit of \$697.50 to offset against the unpaid rent. The landlord also seeks a Monetary Order for the balance of rent and

the \$50.00 filing fee. The landlord requests an Order of Possession effective within two days of service to the tenants.

Analysis

I refer the parties to s 26 of the *Act* which states:

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.

I am satisfied with the undisputed evidence before me that the tenants have failed to pay rent as detailed above. The landlord has provided sufficient evidence in the form of rent ledgers detailing the payments made each month and the amount outstanding. I will allow the landlord to amend the application to include unpaid rent for June as the tenants would be aware that rent was due on the first day of each month. Therefore the landlord is entitled to recover rent arrears to the sum of **\$5,160.00**.

I Order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenants' security deposit of **\$697.50** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlords will receive a Monetary Order pursuant to s.67 of the *Act* for the balance owing as follows:

Outstanding rent	\$5,160.00
Less Security Deposit	(-\$697.50)
Plus filing fee	\$50.00
Total amount due to the landlord	\$4,512.50

I have reviewed all documentary evidence and accept that the tenants have been served with the Notice to End Tenancy pursuant to section 88 of the *Residential Tenancy Act*. The Notice is deemed to have been received by the tenants on May 24, 2015. The Notice states that the tenants have five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay all the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an Order of Possession pursuant to section 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlords' amended monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$4,512.50**. The Order must be served on the Respondents. If the Respondents fail to comply with the Order, the Order is enforceable through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenants. This Order must be served on the Respondents. If the Respondents fail to comply with this Order, the Order may be filed in the Supreme Court of British Columbia and 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: July 20, 2015

Residential Tenancy Branch

