



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STRATTON VENTURES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR MNR

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The landlord originally applied for an order of possession for unpaid rent or utilities and for a monetary order unpaid rent or utilities through the Direct Request process.

On June 24, 2015, an Adjudicator wrote an interim decision adjourning the landlord's original Application for Dispute Resolution submitted through the Direct Request process to a participatory hearing scheduled for this date, Friday, August 21, 2015 at 9:30 a.m., Pacific Time. The interim decision dated June 25, 2015 should be read in conjunction with this decision.

The tenants were provided with a Notice of Hearing dated July 2, 2015 indicating the hearing date and time of Friday, August 21, 2015 at 9:30 a.m., Pacific Time. Only the agent for the landlord (the "agent") attended the hearing on behalf of the named landlord company. As the tenants did not attend the hearing, and given the Adjudicator's previous finding that the tenants were deemed served on June 16, 2015 with the Notice of Direct Request Proceeding, I concur with that finding and also deem the tenants served as of June 16, 2015. Given the above, the hearing continued with the agent and without the tenants.

The hearing process was explained to agent, and the agent was given an opportunity was given to ask questions about the hearing process. Thereafter the agent gave affirmed testimony, was provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

Preliminary and Procedural Matters

At the outset of the hearing, the agent testified that the tenants vacated the rental unit on July 31, 2015, since the landlord's application was filed. As a result, the agent requested to withdraw the landlord's request for an order of possession as the tenants have already returned possession of the rental unit by vacating the rental unit on July 31, 2015.

The agent testified that in addition to the unpaid June 2015 rent owed as listed in the landlord's original application, the tenants have subsequently not paid any rent for July 2015. As a result, the agent requested to amend the application to include rent owed for July 2015 also as the tenants continued to occupy the rental unit until vacating on July 31, 2015. I find that this request to amend the application does not prejudice the respondent tenants as the tenants would know or ought to have known that rent is due pursuant to the tenancy agreement. Therefore, I permit the agent to amend the landlord's application to \$1,700, which consists of \$850 for unpaid rent for each of the months of June and July of 2015 pursuant to section 64(3) of the *Act*.

Issue to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on June 1, 2014. Monthly rent in the amount of \$850 was due on the first day of each month. The tenants paid a security deposit of \$425 and a pet damage deposit of \$425 at the start of the tenancy, which the landlord continues to hold. The agent testified that the original named landlord entity which I will refer to as "W.H.I." sold the building to the named landlord entity who is the applicant landlord in the matter before me, which I will refer to as "S.V.".

The agent testified that a 10 Day Notice dated June 2, 2015 was posted to the tenants' door on June 2, 2015 at approximately noon. The effective vacancy date listed on the 10 Day Notice is June 12, 2015. The agent stated that the tenants did not dispute the 10 Day Notice or pay any of the \$850 in unpaid rent indicated on the 10 Day Notice as owed as of June 1, 2015.

The agent testified that the tenants also failed to pay any rent for the month of July 2015 and ultimately vacated the rental unit on July 31, 2015.

Analysis

Based on the undisputed testimony of the agent and the documentary evidence before me, and on the balance of probabilities, I find the following.

Unpaid rent/loss of rent – Section 26 of the *Act* requires that a tenant pay rent when it is due in accordance with the tenancy agreement, whether or not the landlord complies with the *Act*. Therefore, I accept the agent's undisputed testimony and I find the tenants have breached section 26 of the *Act* by failing to pay \$850 for June 2015 rent, and I find that the landlord suffered a loss of July 2015 rent in the amount of \$850 as the tenants were overholding the rental unit beyond the end of tenancy date which I find to be June 15, 2015. The 10 Day Notice dated June 2, 2015 was deemed served on June 5, 2015 pursuant to section 90 of the *Act* as it was posted to the tenants' door which automatically corrects the effective vacancy date to June 15, 2015 pursuant to section 53 of the *Act*.

The landlord continues to hold the tenants' security deposit of \$425 and pet damage deposit of \$425 which has accrued no interest since the start of the tenancy for a total \$850 in deposits. As the landlord's claim had merit, **I grant** the landlord the recovery of the **\$50** filing fee.

I find that the landlord has established a total monetary claim of **\$1,750** as follows and that section 72 applies towards offsetting the security deposit and the pet damage deposit, which the agent verbally requested during the hearing:

Item 1	Unpaid June 2015 rent	\$850
Item 2	Loss of July 2015 rent	\$850
Item 3	Recovery of filing fee	\$50
SUB-TOTAL		\$1,750
<i>Less tenants' \$850 in combined deposits as described above</i>		<i>-(850)</i>
TOTAL AMOUNT OWING BY TENANTS TO LANDLORD		\$900

I ORDER the landlord to retain the tenants' full \$425 security deposit and full \$425 pet damage deposit in partial satisfaction of the landlord's monetary claim. **I grant** the

landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$900**.

Conclusion

The landlord's application was successful.

The landlord has established a total monetary claim of \$1,750 and has been ordered to retain the tenants' full security deposit and pet damage deposit totaling \$850 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$900. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: August 21, 2015

Residential Tenancy Branch

