



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to retain all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The agent testified that the Notice of Hearing, Application and documentary evidence were served on the tenants by registered mail on July 9, 2015, each with their own registered mail package. The agent provided two registered mail receipts with tracking numbers in evidence and confirmed that the name and address matched the name of the tenant and the rental unit address. The agent also confirmed that the tenants continue to occupy the rental unit. The agent testified that he tracked the registered mail packages online and they showed as being successfully delivered and signed for by the two tenants, both on July 10, 2015, which is supported by the Canada Post registered mail tracking website information. I find the tenants were duly served as of July 10, 2015, the day they both signed for and accepted the registered mail packages, in accordance with the Act.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on October 1, 2011. Originally, monthly rent in the amount of \$840 was due on the first day of each month and was subsequently increased three times over the course of the tenancy to the current monthly rent of \$904. A copy of all three rent increase documents were submitted in evidence in support of the agent's testimony. The tenants paid a security deposit of \$420 at the start of the tenancy which the landlord continues to hold.

The agent testified that a 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") dated June 5, 2015 was served on the tenants on June 5, 2015 by posting the 10 Day Notice on the tenants' at 5:30 p.m., with an effective vacancy date of June 15, 2015. The tenants did not dispute the 10 Day Notice and did not pay the amount of rent owed, \$1,808, within five days of receiving the 10 Day Notice.

The amount owing on the 10 Day Notice was listed as \$1,808, which was comprised of \$904 in unpaid May 2015 rent, and \$904 in unpaid June 2015 rent. The landlord has claimed for loss of July and August 2015 rent also in their application, in case the tenants failed to vacate the rental unit by the effective vacancy date, which the agent confirmed was the case as the tenants continue to occupy the rental unit. The agent made a verbal request for an order of possession also during the hearing.

The landlord also submitted a copy of the tenants' account ledger, proof of service documents and correspondence with the tenants, in evidence.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenants failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The effective vacancy date of the 10 Day Notice corrects automatically under the *Act* to June 18, 2015 pursuant to section 53 of the *Act* as the 10 Day Notice was posted to the tenant's door on June 5, 2015 and pursuant to section 90 of the *Act*, they are deemed served three days later on June 8, 2015. I find the tenants are conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the corrected effective vacancy date of the 10 Day Notice, June 18, 2015. The tenants continue to occupy the rental unit. Therefore, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenants.

Claim for unpaid rent and loss of rent – I accept the agent's undisputed testimony that the tenants failed to pay \$904 in rent for each of the months of May and June 2015 for a total of \$1,808, and that the landlord suffered a loss of rent of \$1,808 comprised of loss of July 2015 rent of \$904, and loss of August 2015 rent of \$904. Pursuant to section 26 of the *Act*, tenants must pay rent when it is due in accordance with the tenancy agreement.

Based on the above, **I find** that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. **I find** the landlord has met the burden of proof and has established a monetary claim of **\$3,616** comprised of \$1,808 owing in unpaid rent and \$1,808 owing for loss of rent as claimed and as described above.

The landlord is holding a security deposit of \$420 which was paid by the tenants at the start of the tenancy and which has accrued no interest to date.

As the landlord has succeeded with their application, **I grant** the landlord the recovery of the filing fee in the amount of **\$50**.

Monetary Order – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit as follows:

Unpaid May 2015 rent	\$904
Unpaid June 2015 rent	\$904
Loss of July 2015 rent	\$904
Loss of August 2015 rent	\$904
Subtotal	\$3,666

<i>(Less tenants' security deposit)</i>	<i>-\$420</i>
TOTAL AMOUNT OWING BY THE TENANTS TO THE LANDLORD	\$3,246

Conclusion

The landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$3,666 as indicated above. I authorize the landlord retain the tenants' full security deposit of \$420 in partial satisfaction of the landlord's monetary claim and I grant the landlord a monetary order under section 67 for the balance owing by the tenants to the landlord in the amount of **\$3,246**. 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 25, 2015

Residential Tenancy Branch

