



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR MNR MNSD FF
For the tenants: CNR

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “*Act*”) by both parties, a cross-application. The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, to keep all or part of the tenants’ security deposit, and to recover the cost of the filing fee. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”).

The landlord, two agents for the landlord, and the tenants appeared at the teleconference hearing and gave affirmed testimony. The hearing process was explained to the parties. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the matters before me.

Both parties confirmed that they received documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. I find the parties were sufficiently served in accordance with the *Act* as a result.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled to recover the cost of the filing fee under the *Act*?
- What should happen to the tenants’ security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy agreement began on November 1, 2011 and reverted to a month to month tenancy after November 1, 2012. Monthly rent of \$1,400 was due on the first of the month and was not increased during the tenancy. The tenants paid a security deposit of \$700 to the landlord at the start of the tenancy, which the landlord continues to hold.

A copy of a 10 Day Notice dated July 2, 2015 was submitted in evidence. The tenants testified that they received the 10 Day Notice on July 2, 2015 and disputed it on July 6, 2015, which file records support, followed by an amendment on July 9, 2015. The amount listed as owing is \$750.00 due July 1, 2015. The landlord testified that the tenants did not pay the amount owing or dispute the 10 Day Notice within 5 days of the date they were served on July 2, 2015. The parties agreed that the \$750 amount owing was paid in August of 2015 and that rent for August 2015 had also been paid by the tenants in August. The landlord stated that she was still seeking an order of possession, however, and was not interested in reinstating the tenancy.

The tenants stated that they did not pay the full amount of rent for July 2015 as they didn't have enough money. The effective date of the 10 Day Notice was July 2, 2015, which automatically corrects pursuant to section 53 of the *Act* to July 12, 2015. The landlord clarified that currently, no amount of rent is owed as the tenants paid the \$750 owing since the landlord filed her application; however, the landlord is seeking to recover the cost of the filing fee.

Analysis

Based on the documentary evidence and the 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 rent within 5 days after receiving the 10 Day Notice, and that 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 on the 10 Day Notice which in the matter before me is July 12, 2015. I also accept the landlord's testimony that she did not reinstate the tenancy by accepting money for August 2015 rent as the tenants have remained in the rental unit. The landlord is seeking an order of possession.

Accordingly, I **grant** the landlord an order of possession effective **August 31, 2015 at 1:00 p.m.** as the tenants paid to occupy the rental unit for the month of August 2015.

As the landlord's application had merit, **I grant** the landlord the recovery of the **\$50** filing fee. **I ORDER** the landlord to retain **\$50** from the tenants' security deposit in full satisfaction of the landlord's recovery of the filing fee. As a result, **I find** the tenants' security deposit has been reduced from \$700 to \$650.

As the tenants have not vacated the rental unit, the remainder of the tenants' security deposit of \$650 should be dealt with in accordance with section 38 of the *Act* which requires that the tenants provide a forwarding address to the landlord in writing.

Conclusion

The landlord' application has merit.

The landlord has been granted an order of possession effective August 31, 2015 at 1:00 p.m., which must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The landlord has been ordered to retain \$50 from the tenants' security deposit in full satisfaction of the recovery of the filing fee as the landlord's application had merit. The tenants' security deposit has been reduced from \$700 to \$650 as a result.

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 26, 2015

Residential Tenancy Branch

