



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause or unpaid rent pursuant to section 55;
- a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 0954 in order to enable the tenants to connect with this teleconference hearing scheduled for 0930. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The agent confirmed she had full authority to act on behalf of the landlord.

The agent testified that the landlord served the tenants with the dispute resolution package on 16 June 2015 by registered mail. The agent provided me with Canada Post tracking numbers that showed the same. The agent informed me that the mailings were returned as the tenants failed to retrieve the mailings.

Residential Tenancy Policy Guideline, "12. Service Provisions" sets out that service cannot be avoided by failing to retrieve the mailing:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

In accordance with sections 89(1) and 90 of the Act, the tenants were deemed served with the dispute resolution package on 21 June 2015, the fifth day after their mailing.

The agent testified that the landlord served the tenants with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 2 June 2015 by posting that notice to the tenants' door. On the basis of this evidence, I am satisfied that the tenants were deemed served with the 10 Day Notice pursuant to sections 88 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent or cause? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 6 July 2011. Current monthly rent is \$1,127.00 and is due on the first. The landlord continues to hold the tenants' security deposit in the amount of \$550.00, which was collected at the beginning of this tenancy.

On 2 June 2015, the landlord issued the 10 Day Notice to the tenants. The 10 Day Notice was dated 2 June 2015 and set out an effective date of 12 June 2015. The 10 Day Notice set out that the tenant failed to pay \$1,154.00 in rent that was due on 1 June 2015. The agent testified that this amount included arrears from past months.

The agent testified that this amount was not paid within five days of receiving the 10 Day Notice. The agent testified that she was not aware of any reason that would allow the tenants to deduct any amount from rent.

The landlord did not provide a ledger of current rent owing in support of its application. The agent testified to various payments made by the tenants; however, the dates and amounts of these payments changed at various times in the agent's testimony. The

agent testified that landlord issued receipts to the tenants for all payments received that the payments were received on the basis of “use and occupancy only”.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenants failed to pay the outstanding rent within five days of receiving the 10 Day Notice. There is no evidence before me that indicates that the tenants were entitled to deduct amounts from rent or that the landlord has waived enforcement of the 10 Day Notice. The tenants have not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenants’ failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by 15 June 2015, the corrected effective date of the 10 Day Notice. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The landlord did not provide me with a ledger to substantiate the current rent arrears. The agent provided testimony that was uncertain as to the dates and amount of various payments received. I am not satisfied that the landlord has shown, on a balance of probabilities, its entitlement to a specific amount of outstanding rent; however, I am satisfied that some amount is owed by the tenants. Accordingly, this portion of the landlord’s claim is dismissed with leave to reapply.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

The agent testified that the landlord continued to hold the tenants \$550.00 security deposit, plus interest, paid at the beginning of the tenancy. Over that period, no interest is payable. The landlord may retain \$50.00 from the security deposit in satisfaction of the monetary order.

Conclusion

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

The landlord is entitled to retain \$50.00 from the tenants' security deposit in satisfaction of the \$50.00 monetary order.

The landlord's claim for rent arrears is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable time limit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: August 12, 2015

Residential Tenancy Branch

