



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASSOCIATED PROPERTY MANAGEMENT (2001) LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

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

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order unpaid rent or utilities, for damages to unit, site or property, for authorization to keep all or part of the tenants’ security deposit, and to recover the cost of the filing fee.

The tenants applied for more time to make an application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), and to cancel a 10 Day Notice dated August 6, 2015.

An agent for the landlord (the “agent”) attended the hearing. The tenants did not attend the hearing. As the tenants did not attend the hearing to present the merits of their application, the tenants’ application was **dismissed, without leave to reapply**, after the 10 minute waiting period had elapsed. The hearing continued with consideration of the landlord’s application.

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 her relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

The agent testified that the tenants were served with the Notice of Hearing, Application and documentary evidence by registered mail addressed to the rental unit address on

August 20, 2015. The registered mail tracking numbers, one for each tenant, were provided in evidence and according to the Canada Post registered mail tracking website, both tenants signed for their respective packages on August 23, 2015. I find that both tenants were served with the Notice of Hearing, Application and documentary evidence from the landlord on August 23, 2015 in accordance with the *Act*.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matter

The agent testified that in addition to the rent owed for August 2015, the tenants have subsequently not paid the rent for September 2015. As a result, the agent requested to amend the landlord's application to include loss of rent for September 2015. The agent confirmed that the tenants continue to occupy the rental unit. I find that the agent's request to amend the application does not prejudice the respondent tenants as the tenants would be aware that rent is due pursuant to the tenancy agreement, I amend the application to include loss of rent for September 2015 also.

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?
- 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 fixed term tenancy agreement began on August 15, 2010 and reverted to a month to month tenancy after July 31, 2011. Originally, monthly rent was \$750 and was increased in 2013 and 2015 to the current amount of \$797.45 per month, which is due on the first day of each month. The tenants paid a security deposit of \$375 at the start of the tenancy, which the landlord continues to hold.

The landlord's monetary claim of \$1,950.96 is comprised of the following:

Item 1	Unpaid August 2015 rent	\$797.45
Item 2	NSF (non-sufficient funds) fee for August 2015 returned pre-authorized rent payment	\$30
Item 3	Loss of September 2015 rent	\$797.45
Item 4	NSF fee for September 2015 returned pre-authorized rent payment	\$30
Item 5	Damage to front door glass of rental building caused by tenant N.L.	\$296.06
	TOTAL	\$1,950.96

The agent testified that the tenants failed to pay August 2015 rent of \$797.45 and that the tenants owe a \$30 NSF charged by the bank to the landlord. In addition, the tenants rent payment for September 2015 was returned as NSF, and as a result, the landlord has suffered a loss of \$797.45 for September 2015 plus a second \$30 NSF fee.

A copy of the 10 Day Notice dated August 6, 2015 was submitted in evidence. The agent testified that the 10 Day Notice was posted to the tenants' door on August 6, 2015. Pursuant to section 90 of the *Act*, the tenants are deemed to have been served three days later on August 9, 2015, and although the tenants disputed the 10 Day Notice on August 11, 2015, by failing to attend the hearing to present the merits of their application, the tenants' application was dismissed without leave to reapply, which has the same effect as not disputing the 10 Day Notice. The agent verbally requested an order of possession.

Regarding the landlord's claim for damages, the agent testified that tenant N.L. was caught on video chasing someone out of the building and pushed on the front glass door of the building on the glass versus the door push bar to open the door resulting in the front glass door breaking. The agent referred to an e-mail submitted in evidence dated July 29, 2015 which supports the agent's testimony. The landlord submitted a copy of an invoice dated August 11, 2015 in the amount of \$296.06 to repair the glass door, which also supports the agent's testimony.

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.

Items 1 to 4 – I accept the agent's undisputed testimony that the tenants failed to pay \$797.45 for August 2015, and that the landlord suffered a loss of \$797.45 for September 2015, plus a loss of \$60 total comprised of two \$30 NSF charges when the tenants' automatic payments were declined by the bank. Section 26 of the *Act* requires that tenants pay rent when it is due in accordance with the tenancy agreement, whether or not the landlord complies with the *Act*. Therefore, I find the tenants have breached section 26 of the *Act* by failing to pay rent as claimed. Therefore, I find the landlord has met the burden of proof and is entitled to **\$1,654.90** comprised of \$797.45 for unpaid August 2015 rent, \$797.45 for loss of September 2015 rent, plus \$60 in NSF fees.

Item 5 – I find the landlord has met the burden of proof by providing documentary evidence and undisputed oral testimony, plus a receipt to support that tenant N.L. damaged the front glass door of the entrance to the rental building and that the tenant owes the landlord **\$296.06** as a result.

The landlord continues to hold the tenants' security deposit of \$375 which has not accrued interest since the start of the tenancy. 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 **\$2,000.96** as follows:

Item 1	Unpaid August 2015 rent	\$797.45
Item 2	NSF (non-sufficient funds) fee for August 2015 returned pre-authorized rent payment	\$30
Item 3	Loss of September 2015 rent	\$797.45
Item 4	NSF fee for September 2015 returned pre-authorized rent payment	\$30
Item 5	Damage to front door glass of rental building caused by tenant N.L.	\$296.06
Item 6	Recovery of the cost of the filing fee	\$50
	SUB-TOTAL	\$2,000.96
	<i>Less tenants' \$375 security deposit</i>	<i>-(375)</i>
	TOTAL AMOUNT OWING BY TENANT TO LANDLORD	\$1,625.96

I ORDER the landlord to retain the tenants' full security deposit of \$375 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 **\$1,625.96**.

Order of possession – Section 55 of the *Act* requires that I must grant an order of possession once I have dismissed the tenants' application to dispute a notice to end tenancy, and the landlord, or their agent, has made a request for an order of possession. As the tenants failed to attend the hearing, and the tenants' application to cancel the 10 Day Notice dated August 6, 2015 was dismissed, **I grant** the landlord an order of possession pursuant to section 55 of the *Act* **effective two (2) days** after service on the tenants.

Conclusion

The tenants' application was dismissed in full, without leave to reapply.

The landlord's application is successful.

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

The landlord has established a total monetary claim of \$2,000.96 and has been ordered to retain the tenants' full security deposit of \$375 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 \$1,625.96. 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: September 21, 2015

Residential Tenancy Branch

