



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, FF

Introduction

This hearing concerns the landlord's application for an order of possession / a monetary order as compensation for unpaid rent / and recovery of the filing fee. The landlord's agent (the "landlord") attended and gave affirmed testimony. Neither tenant appeared.

The landlord testified that the application for dispute resolution and the notice of hearing (the "hearing package") was personally served on the tenants on July 05, 2015. Based on the affirmed / undisputed testimony of the landlord, and in consideration of section 89 of the Act which speaks to **Special rules for certain documents**, I find that the tenants have been duly served.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the original fixed term of tenancy was from September 15, 2012 to September 14, 2013. Thereafter, tenancy has continued on a month-to-month basis. Monthly rent is due and payable in advance on the first day of each month. Presently, the total monthly rent is \$1,100.00; \$725.00 of this total is paid by the Ministry, and the balance of \$375.00 is required to be paid by the tenants. A security deposit of \$450.00 was collected.

The most recent 10 day notice to end tenancy for unpaid rent issued by the landlord, which is before me, is dated May 21, 2015. While the application documents that the notice was served by way of posting to the unit door on that same date, the landlord testified that the notice was actually served in-person on the tenants on May 21, 2015. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is May 31, 2015. The amount of rent shown on the notice as outstanding on May 01, 2015 is \$1,655.00. Subsequently, the tenants made

payment in the limited amount of \$400.00 on June 04, 2015. Thereafter, the tenants have continued to make partial and intermittent payments toward rent, and they presently continue to reside in the unit.

Analysis

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated May 21, 2015. The tenants did not pay the full amount of rent outstanding within 5 days of receiving the notice, and did not apply to dispute the notice. The tenants are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlord has established entitlement to an **order of possession**.

In regard to compensation, based on the documentary evidence and the affirmed / undisputed testimony of the landlord, and as the tenants have not paid their portion of rent due on September 01, 2015, I find that the landlord has established a claim for unpaid rent in the total amount of **\$1,895.00**. As the landlord has succeeded with the principal aspects of her application, I find that she has also established entitlement to recovery of the **\$50.00** filing fee. [**Total entitlement: \$1,945.00**].

Section 72 of the Act addresses **Director's orders: fees and monetary orders**, and provides in part:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Following from all of the above, I order that the landlord may withhold the security deposit of **\$450.00**, and I grant the landlord a **monetary order** for the balance owed of **\$1,495.00** (\$1,945.00 - \$450.00).

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenants. This order must be served on the tenants.

Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,495.00**. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

This decision 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 02, 2015

Residential Tenancy Branch

