



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied: to keep the Tenants' security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and, to recover the filing fee from the Tenants.

An agent for the Landlord (the "Landlord") appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance by the Tenants during the 13 minute duration of the hearing or any submission of written evidence prior to the hearing. As a result, I turned my mind to the service of the documents for this hearing by the Landlord.

The Landlord testified that he served each Tenant personally with a copy of the Application and the Notice of Hearing documents on July 10, 2015. Based on the undisputed evidence of the Landlord, I find the Landlord served the Tenants with the required documents for this hearing pursuant to Section 89(1) (a) of the Act

The Landlord also explained that since the time of making the Application, the Tenant has failed to pay rental arrears and requested that the monetary amount be increased to \$13,000.00. As the Tenants would have been aware that rent was payable in this tenancy, I allowed the Landlord to amend the Application to reflect this claim amount pursuant to my authority under Section 64(3) (c) of the Act.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent for five months?

- Is the Landlord entitled to keep the Tenants' security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The Landlord testified that this tenancy started on March 17, 2015 for a fixed term of one year due to expire on April 30, 2016. A written tenancy agreement was completed which shows that rent is payable by the Tenants in the amount of \$2,600.00. The Landlord testified that this amount is payable on the first day of each month. The Tenants paid the Landlord a \$1,300.00 security deposit at the start of the tenancy which the Landlord still retains.

The Landlord testified that the Tenants have failed to pay rent for the months of May, June, July, August and September 2015 totaling \$13,000.00. The Landlord explained that at the start of the tenancy the Tenants provided him with six postdated cheques. The cheque for May and June 2015 both were returned to the Landlord by his bank because there were insufficient funds in the Tenants' account.

As a result, the Landlord personally served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on June 26, 2015. The Notice was provided into evidence and shows an expected date of vacancy of July 6, 2015 due to \$5,200.00 in unpaid rent due on June 1, 2015.

The Landlord testified that when he attempted to cash the rent cheque for July, 2015 his bank informed him that the account had been closed. The Landlord testified that the bank also informed him that if he were to attempt to continue cashing the remaining postdated cheques provided to him by the Tenants he would continue to incur more bank charges.

The Landlord testified that he had several conversations with the Tenants about the unpaid rent but they keep informing him that the cheques are valid. The Landlord testified that he offered the Tenants other ways for them to pay rent but none of the rental arrears to date have been paid by the Tenants. Therefore, the Landlord now seeks to end the tenancy.

Analysis

Having examined the Notice, I find that the contents on the approved form complied with the requirements of Section 52 of the Act. I also accept the Landlord's undisputed

evidence that the Notice was served to the Tenants personally on June 26, 2015 in accordance with Section 88(a) of the Act.

Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and must vacate the rental unit on the vacancy date of the Notice.

There is no evidence before me that the Tenants paid the overdue rent or disputed the Notice. As a result, I find the Tenants are conclusively presumed to have accepted that the tenancy ended on the vacancy date of the Notice being July 6, 2015. As this date has now passed, the Landlord is entitled to an Order of Possession which is effective **two days after service on the Tenants**. This order may then be filed for enforcement in the Supreme Court of British Columbia as an order of that court.

Based on the undisputed oral evidence of the Landlord above, I also find the Landlord is entitled to recover **\$13,000.00** for the five months of rental arrears. I am satisfied by the Landlord's oral evidence that the Tenants' rent cheques for the May and June 2015 rent were not honoured. I am further satisfied that the Tenants have made no attempts to pay rent in another form, such as cash or a bank draft, to satisfy their requirement to pay rent under the tenancy agreement.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$100.00** Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is **\$13,100.00** (\$13,000.00 + \$100.00).

As the Landlord already holds the Tenants' **\$1,300.00** security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is awarded a Monetary Order for the outstanding balance of **\$11,800.00** (\$13,100.00 - \$1,300.00). This order must be served on the Tenants and may then be enforced in the Provincial Court (Small Claims) as an order of that court. Copies of the above orders for service and enforcement are attached to the Landlord's copy of this decision.

Conclusion

The Tenants have failed to pay rent as required by the tenancy agreement and the Act. As a result, the Landlord is granted an Order of Possession effective two days after service on the Tenants.

The Landlord is allowed to keep the Tenants' security deposit and is granted a Monetary Order for the outstanding amount awarded of **\$11,800.00**.

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 09, 2015

Residential Tenancy Branch

