



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, and to recover the filing fee from the Tenants.

An agent for the Landlord Company (the “Landlord”) appeared for the hearing and provided affirmed testimony and documentary evidence prior to the hearing. However, there was no appearance for the Tenants during the seven minute duration of the hearing or any submission of evidence by them prior to this hearing. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlord testified that she served each Tenant with a copy of the Application and the Notice of Hearing documents to the rental unit address. This was done by registered mail on August 18, 2015. The Landlord provided a copy of the Canada Post tracking receipts as evidence to verify this method of service.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find that the Tenants were deemed served with the required documents on September 23, 2015 pursuant to the Act.

The hearing continued to hear the undisputed evidence of the Landlord. The Landlord explained that the Tenants had abandoned the rental unit at some point during the end of August 2015. Therefore, she withdrew her Application for an Order of Possession. The Landlord requested that she be allowed to keep the Tenant’s security deposit in partial satisfaction of her claim for unpaid rent. Pursuant to my authority under Section 64(3) (c) of the Act, I amended the Landlord’s Application to include this request.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent for August 2015 and a late rent fee for July 2015?
- Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

The Landlord testified that this month to month tenancy started on January 1, 2015. Rent of \$926.00 was payable on the first day of each month. The Tenants paid a security deposit of \$463.00 at the start of the tenancy which the Landlord still retains.

The Landlord testified that the Tenants rent cheque for July 2015 was returned because of insufficient funds. The outstanding rent was paid by the Tenants on July 25, 2015. The Landlord referred me to the written tenancy agreement signed by the parties which states under section 5e that the Tenants will pay a \$25.00 fee for a "not sufficient funds" returned cheque.

The Landlord testified that the Tenants again failed to pay rent for August 2015. As a result, the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") by posting it to the Tenants' door on August 6, 2015. The Notice was provided into evidence with an unpaid rent amount of \$951.00 which comprised of the July 2015 insufficient funds fee and unpaid August 2015 rent. The Landlord testified that in her Application she had claimed for anticipated lost rent for September and October 2015 which she no longer required. As a result, the Landlord's monetary claim to be determined is \$951.00.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under the tenancy agreement **whether or not** the landlord complies with 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. Section 7(1) (d) of the Residential Tenancy Regulation allows a landlord to charge an administration fee up to \$25.00 for the return of a tenant's cheque by a financial institution if the tenancy agreement provides for this fee.

I accept the undisputed oral evidence of the Landlord, along with the Notice, that the Tenants failed to pay rent for August 2015 and are liable for this amount. I also accept

the evidence that the Tenants' rent cheque for July 2015 was returned to the Landlord because there were insufficient funds in the Tenants' bank account. In accordance with the Residential Tenancy Regulation, the tenancy agreement signed by both parties allowed for a \$25.00 fee to be charged by the Landlord. Therefore, I find the Tenants are also liable for this fee.

As a result, the total amount awarded to the Landlord is **\$951.00**. As the Landlord has been successful in her Application, the Landlord is also entitled to recover from the Tenants the **\$50.00** filing fee for the cost of this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is **\$1,001.00** (\$951.00 + \$50.00).

As the Landlord already holds the Tenants' **\$463.00** security deposit, I grant the Landlord's request to keep this amount pursuant to Section 72(2) (b) of the Act in partial satisfaction of the monetary claim. As a result, the Landlord is issued with a Monetary Order for the outstanding balance of **\$538.00** (\$1,001.00 - \$463.00). This order must be served on the Tenants and may then be filed in the Small Claims Court and enforced as an order of that court. Copies of the order are attached to the Landlord's copy of this Decision.

Conclusion

The Tenants have breached the Act by not paying rent. Therefore, the Landlord may keep the Tenants' security deposit and is issued with a Monetary Order for the remaining balance of \$538.00. The Landlord withdrew her Application for an Order of Possession as the Tenants had vacated the rental unit.

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: October 28, 2015

Residential Tenancy Branch

