



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, 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 Tenant's security deposit, for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), and to recover the filing fee from the Tenants.

An agent for the Landlord and her assistant appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. However, 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. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlord's agent testified that she served each Tenant with a copy of the Application and the Notice of Hearing documents on September 23, 2015 by registered mail. The Landlord's agent provided the Canada Post tracking numbers into oral evidence. These numbers are documented on the front page of this decision.

Section 90(a) of the Act states that a document sent by mail is deemed to have been received five days later after it is mailed. Based on the undisputed evidence of the Landlord, I find that the Landlord served the Tenants with the required documents for this hearing in accordance with Section 89(1) (c) of the Act. The hearing continued to hear the undisputed evidence of the Landlord.

The Landlord's agent explained at the start of the hearing that even though the Tenants were in rental arrears, she was in negotiation with the Tenants regarding a payment plan in an effort to continue the tenancy. However, the Landlord was still seeking an Order of Possession and Monetary Order for the remaining rental arrears relating to August 2015 rent only.

The Landlord explained that since the issuing of the notice to end tenancy, the Landlord has accepted partial payments of rent and provided receipts to the Tenants that these amounts were being accepted for use and occupancy only. Therefore, in this hearing I considered the Landlord's Application for an Order of Possession and a Monetary Order for the outstanding rent for August 2015. The Landlord's Application to keep the Tenant's security deposit was withdrawn and the Landlord is at liberty to re-apply for this.

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 and the insufficient funds fee for August 2015?

Background and Evidence

The Landlord's agent testified that this month to month tenancy started on November 1, 2014. A written tenancy agreement was completed which established rent in the amount of \$1,200.00 payable by the Tenants on the first day of each month. Section 5(e) of the tenancy agreement establishes that the Tenants will pay an administration fee of \$25.00 if the bank returns their rent cheque as non-sufficient funds ("NSF").

The Landlord's agent testified that the Tenant's rent cheque for August 2015 was returned as NSF. The Landlord's assistant testified that as a result, she served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") by posting it on the Tenants' door on September 8, 2015. A copy of the Notice provided in evidence shows a vacancy date of September 14, 2015.

The Landlord's agent testified that the Tenants failed to pay the \$1,200.00 rent within the five days after it was served to the Tenants. However, since this time the Tenants have paid full rent for October and November 2015 and \$200.00 towards the August 2015 rental arrears.

The Landlord's agent testified that for these payments the Tenants were issued with a receipt for use and occupancy only and were informed that the tenancy was not going to be re-instated until the rental arrears were satisfied. Therefore, the Landlord now seeks a Monetary Order for unpaid rent in the amount of \$1,000.00 and the \$25.00 fee provided by the tenancy agreement.

Analysis

Section 26(1) of the Act requires a tenant to pay rent under a 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, the 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 they must vacate the rental unit on the date to which the Notice relates.

Having examined the Notice, I find that the contents on the approved form complied with the requirements of the Act. I also accept that the Tenants were served by the Landlord's assistant with the Notice on their rental unit door on September 8, 2015.

Section 90(c) of the Act explains that a document served by attaching it to the door is deemed to have been received three days after it is attached. Therefore, I find the Tenants were deemed to be served with the Notice on September 11, 2015 and therefore had until September 16, 2015 to pay all of the overdue rent or dispute the Notice. There is no evidence before me that the Tenants did either.

As the Notice was deemed to have been received by the Tenants on September 11, 2015 the vacancy date on the Notice is corrected to September 21, 2015 pursuant to Section 53 of the Act.

As a result, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the corrected vacancy date of the Notice. As this effective date has now passed and the Tenants are still in rental arrears for August 2015, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenants. This order must be served to the Tenants and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court.

Based on the undisputed evidence of the Landlord's agent's testimony above, I also find that the Landlord is entitled to the outstanding unpaid rent for August 2015 in the amount of **\$1,000.00** claimed.

Section 7(d) of the *Residential Tenancy Regulation* allows a landlord to charge a fee of no more than \$25.00 for the return of a tenant's cheque by a financial institution which is documented in a tenancy agreement. The tenancy agreement provided by the Landlord into evidence indicates the Tenants will be charged \$25.00 for an NSF cheque. Therefore, I find that the Landlord is entitled to the **\$25.00** fee provided by the tenancy agreement.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$50.00** filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$1,075.00.

The Landlord is granted a Monetary Order pursuant to Section 67 of the Act for this amount. 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 if the Tenants fail to make payment. Copies of the above orders are attached to the Landlord's copy of this decision.

Conclusion

The Tenants have failed to pay rent. Therefore, the Landlord is granted an Order of Possession and Monetary Order for \$1,075.00. The Landlord's Application to keep the Tenant's security deposit was withdrawn.

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: November 19, 2015

Residential Tenancy Branch

