



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order. The hearing was conducted via teleconference and was attended by the landlord's agent.

The landlord testified the female tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* personally and the male tenant was served by registered mail on October 7, 2015 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed. Based on the testimony of the landlord, I find that each tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent and late fees; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on July 13, 2015 for a 6 month fixed term tenancy beginning on July 15, 2015 for the monthly rent of \$850.00 due on the 1st of each month and a security deposit of \$425.00 was required but not paid. The tenancy agreement stipulates the tenants must pay a fee of \$50.00 when rent is paid late in any month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on September 9, 2015 with an effective vacancy date of September 19, 2015 due to \$3,750.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the months of July, August, and September 2015 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on September 9, 2015 at 11:30 a.m. and that this service was witnessed by a third party.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days. The landlord submits the tenants have also failed to pay any rent for the months of October and November 2015.

The landlord seeks recovery of the late rent fee of \$50.00 for each of the months of the tenancy, as the tenants have not paid any rent at all. The landlord also seeks to collect the security deposit that was required to be paid by the tenants at the start of the tenancy.

The landlord submitted also that the tenants were originally supposed to move into the basement of the residential property and pay \$850.00 per month. However due to a flood in the basement the tenants moved into the upstairs part of the residential property that normally secures \$1,200.00 per month rent.

The landlord sought compensation for rent in the amount of \$1,200.00 per month for the months of September to November 2015 and \$600.00 for the ½ month of August 2015. The tenants were supposed to move into the basement after the flood repairs had been completed in late July 2015 but they did not and still occupy the upper unit.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on September 12, 2015 and the effective date of the notice is amended to September 22, 2015, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenants are conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

In regard to the landlord's claim to have the tenants pay the security deposit, I find that since I have determined the tenancy has now ended the landlord is no longer entitled to collect a security deposit. I note that this does not prevent the landlord from seeking a monetary claim against the tenants for any losses incurred as a result of the tenancy.

As to the amount of the landlord is entitled to for unpaid rent and fees, I find there is no evidence before me that the parties agreed to an increased rent amount from \$850.00

to \$1,200.00. As such, I find the landlord can only claim for unpaid rent in the amount of \$850.00 per month.

As such, I find, based on the landlord's undisputed submissions, the landlord is entitled to \$850.00 per month for each of August, September, October, and November and \$425.00 for the ½ month of July 2015.

The landlord claims \$50.00 per month for late fees as per the tenancy agreement. However, I note that Section 7(1)(d) stipulates a landlord may charge a non-refundable fee for an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for a late payment fee.

Therefore and in combination with the landlord's undisputed testimony that the tenants have paid no rent at all, I grant the landlord \$25.00 per month for the months of July, August, September, October, and November 2015.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$4,000.00** comprised of \$3,825.00 rent owed; \$125.00 late fees; and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: November 18, 2015

Residential Tenancy Branch

