



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARKVIEW APARTMENTS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “*Act*”) by the landlord for an order of possession for unpaid rent, for a monetary order for unpaid rent, for authorization to retain the tenants’ security deposit, and to recover the cost of the filing fee.

An agent for the landlord (the “agent”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), the Application for Dispute Resolution (the “Application”) and documentary evidence were considered. The agent provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the tenants by registered mail on October 22, 2015. The agent provided two registered mail tracking numbers in evidence and confirmed that the names and addresses on the registered mail packages matched the names of the tenants, and the address of the rental unit. The agent also confirmed that the tenants continue to occupy the rental unit. The agent stated that the registered mail packages were returned to sender and marked “unclaimed” which is supported by the online registered mail tracking website information.

Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the *Act*. I find the tenants were deemed duly served on the fifth day after the documents were mailed on October 22, 2015, which makes the deemed served date October 27, 2015, in accordance with the *Act*. I note that refusal or neglect on the part of the respondent tenants to accept a registered mail package does not constitute grounds for an Application for Review Consideration under the *Act*.

Preliminary and Procedural Matter

During the hearing, the agent requested to reduce the landlord's monetary claim from \$4,150.00 to \$900.00 as the tenants paid some of the rent arrears owing, although not within the timeline provided for under section 46 of the *Act*. I find that a reduction of the landlord's claim does not prejudice the tenants and permit the landlord to reduce their claim to \$900.00 plus the \$50.00 filing fee, as the landlord has also claimed for the recovery of the cost of the filing fee. This amendment is permitted pursuant to section 64(3) of the *Act*.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on January 1, 2012. Monthly rent in the amount of \$750.00 was due on the first day of each month. A security deposit of \$375.00 was paid by tenants at the start of the tenancy, which the landlord continues to hold.

The agent confirmed service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, (the "10 Day Notice"), dated October 7, 2015 by personal service on tenant M.G. on October 8, 2015 at 10:30 a.m. at the rental unit. The agent stated that the tenants did not dispute the 10 Day Notice which indicated that \$2,650.00 was owed in unpaid rent as of October 1, 2015 and had an effective vacancy date of October 17, 2015, which corrects automatically under section 53 of the *Act* to October 18, 2015.

The agent testified that the tenants made some payments in November towards the rent arrears but still owe \$150 for loss of November 2015 rent, and \$750 for loss of December 2015 rent. The agent stated that receipts for "use and occupancy" were issued to the tenants for payments made.

The landlord provided a copy of the 10 Day Notice in evidence for this proceeding.

Analysis

Based on the documentary evidence and the undisputed oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of Possession – I find that the landlord suffered a loss of rent of \$150 for November 2015 and a loss of \$750 rent for the months of December 2015 as the tenants continue to occupy the rental unit. The tenants are conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice which automatically corrects under the *Act* to October 18, 2015. Accordingly, I grant the landlord an order of possession effective **two (2) days** after service on the tenants.

Claim for loss of rent – While the agent did confirm some payments were made after the application was filed and before the hearing, the payments were not made within the timelines as required by section 46 of the *Act*. Pursuant to section 26 of the *Act*, tenants must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. The tenants continue to occupy the rental unit. The landlord will not regain possession of the rental unit until after service of the order of possession. I find the landlord has met the burden of proof and I find the landlord has established a monetary claim of **\$900.00** comprised of loss of rent as claimed.

As the landlord has succeeded with their application, I grant the landlord the recovery of the **\$50.00** filing fee.

Monetary Order – I grant the landlord a monetary order pursuant to section 67 of the *Act* in the amount of \$950.00 comprised of \$900.00 in loss of rent, plus the recovery of the \$50.00 filing fee. This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit which the landlord continues to hold in the amount of \$375.00 which has accrued \$0.00 in interest to date. **I authorize** the landlord to retain the tenants' full security deposit of \$375.00 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing to the landlord by the tenants in the amount of **\$575.00**.

Conclusion

The landlord's application is successful.

The landlord is granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$950.00. The landlord has been authorized to retain the tenants' full security deposit of \$375.00 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order under section 67 for the balance owing by the tenants to the landlord in the amount of \$575.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 17, 2015

Residential Tenancy Branch

