



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 is an application brought by the Landlord(s) requesting an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, requesting a monetary order in the amount of \$3918.00, and requesting recovery of the \$50.00 filing fee. The applicants are also requesting an order allowing them to keep the full security/pet deposit towards the claim.

Some documentary evidence and written arguments have been submitted prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed

Issue(s) to be Decided

The issues are whether or not the applicants have established the right to an Order of Possession, and whether or not the applicants have established monetary claim against the respondents, and if so in what amount.

Background and Evidence

The landlords and tenants all agree on the following:

- The tenants paid a combined security/pet deposit of \$1275.00 on August 11, 2014.
- This tenancy began on August 16, 2014 with a monthly rent of \$1275.00 due on the first of each month.
- The was subsequently increased and the present rent is \$1306.00 per month.
- The tenants failed to pay the September 2015 rent and a 10 day Notice to End Tenancy for nonpayment of rent was posted on the tenant's door on September 21, 2015. That outstanding rent was not paid until October 6, 2015.
- As of today's date there is a total of \$3917.50 in rent outstanding.

The landlord testified that this is not the first time the tenants of been late with the rent and therefore they are requesting an Order of Possession for December 31, 2015, and are requesting a monetary order for the outstanding rent plus the filing fee.

The tenants testified that they do owe the full amount of rent outstanding however they now have that rent available, and would like to pay the full amount of rent and stay living in the rental unit.

In response to the tenant's testimony the landlords stated that they are not willing to allow the tenancy to continue past December 31, 2015.

Analysis

Section 46 of the Residential Tenancy Act states:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection

(4) the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

In this case, the tenants failed to pay the September 2015 rent and therefore the landlords had the right to end the tenancy with a 10 day notice. Further the tenants did not pay the overdue rent within the five day grace period, and therefore pursuant to section 46(4) the tenants are conclusively presumed to have accepted that the tenancy ends and must vacate the rental unit.

At the hearing the landlord stated that if a monetary order is issued for the outstanding rent to the end of December 2015 they are willing to allow the tenants to stay until that date, and therefore I have issued an Order of Possession for December 31, 2015.

Further, since the tenants do not dispute the amount of rent outstanding, I allow the landlords claim for that outstanding rent.

I also allow the landlords request for recovery of their \$50.00 filing fee

Conclusion

Pursuant to section 55 of the Residential Tenancy Act I have issued an Order of Possession for 1:00 PM on December 31, 2015.

I have allowed the landlords full monetary claim of \$3967.50 and I therefore order pursuant to section 38(4)(b) of the Residential Tenancy Act, that the landlords may retain the full security/pet deposit totaling \$1275.00 towards the claim, and pursuant to section 67 of the Residential Tenancy Act I have issued a monetary order in the amount of \$2692.50.

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: December 08, 2015

Residential Tenancy Branch

