



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPN, MNR, MNDC, MNSD

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenants MF and KF were served in person on April 15, 2016 with the application for dispute resolution and notice of hearing (the “Package”) in accordance with Section 89 of the Act. The package for Tenant KR was given to Tenants MK and KF at the same time. The Tenants did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The Landlord states that the written tenancy agreement provided as evidence for this hearing had not been presented by the Landlord’s agent for signing by the Landlord. It

is noted that Tenant KR is not named as a tenant on this copy of the tenancy agreement.

The tenancy started on August 1, 2015 and the Tenants moved in a few days earlier. Rent of \$1,250.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$625.00 as a pet deposit. The Tenants owed arrears and failed to pay rent for April 2016 and on April 2, 2016 the Landlord served the Tenants in person with a 10 day notice to end tenancy for unpaid rent (the "Notice"). The amount of unpaid rent indicated on the Notice includes amounts for late fees, daily compound interest from the Landlord's property taxes owed and a strata lien. The Tenant has not paid the arrears, has not paid rent for May 2016, has not moved out of the unit and has not disputed the Notice. It is noted that there is no provision for late fees in the tenancy agreement. The Landlord claims \$13,150.00 as unpaid rent as set out in the copy of a 10 day notice to end tenancy for unpaid rent issued by the Landlord on May 1, 2016. The Landlord confirms that the amount of rent unpaid to and including May 2016 equals \$10,000.00.

The tenancy agreement did not allow pets and pets were discovered in the unit. The Landlord claims a pet deposit.

The Tenants caused the Landlord to be issued with Strata fines and the Landlord claims \$1,000.00. The Landlord submitted several letters from the Strata in relation to warnings and fines. The Landlord declined to clarify which letters were in relation solely to fines that were assessed against the Landlord.

Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch (the "RTB"). If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the

effective date of the Notice. Based on the Landlord's undisputed evidence I find that the Tenant was given the Notice and the Tenant did not dispute this Notice. I find therefore that the Landlord is entitled to an order of possession.

Further based on the Landlord's undisputed evidence of the amount of unpaid rent I find that the Landlord has substantiated that the Tenant owes \$10,000.00 in unpaid rent to and including May 2016. I find therefore on a balance of probabilities the Landlord is entitled to **\$10,000.00**. As the tenancy is ending I dismiss the Landlord's claim for a pet deposit.

Section 7 of the RTB Regulations provides that a landlord may charge a late rent payment fee of no more than \$25.00 and this fee must be provided for in the tenancy agreement.

Section 7 of the Act provides that if a tenant does not comply with their tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Although the Landlord did not sign the tenancy agreement I accept the copy of the tenancy agreement provided here as evidence as indicating the terms of the tenancy that were agreed to at the outset of the tenancy between the Tenants and the Landlord, as represented by the Landlord's agent. As the tenancy agreement does not include an addendum of the Strata rules and as the tenancy agreement does not make any other provision for the Tenants' obligations for Strata fines, I dismiss the claim for such fines. As there is no provision in the tenancy agreement for late fees I dismiss this claim. As the Landlord's property taxes and the Strata lien are not usual obligations of a tenant or set out as obligations of the Tenants in the tenancy agreement, I dismiss the claims for any amounts related to property taxes and the lien.

Deducting the security deposit of **\$625.00** plus zero interest from the Landlord's entitlement of \$10,000.00 leaves **\$9,375.00** owed by the Tenants to the Landlord. As Tenant KR is not a named Tenant on the tenancy agreement, I decline to add this name to the monetary order for this amount.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order that the Landlord retain the **deposit** and interest of \$625.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$9,375.00**. If necessary, this order may be filed in the Small Claims Court and 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: May 19, 2016

Residential Tenancy Branch