



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to two applications made by the landlords. The landlords had originally applied for a Direct Request Proceeding for an Order of Possession for unpaid rent or utilities and a Monetary Order for unpaid rent or utilities. This matter was heard on June 08, 2016 and adjourned to a participatory hearing to be heard at the same time as the landlords' application for an Order of Possession for cause, a Monetary Order for unpaid rent and Utilities, an Order to be permitted to keep all or part of the security and pet deposits and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlords attended the conference call hearing and gave sworn testimony. The landlords provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenants confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession for unpaid rent?
- Are the landlords entitled to an Order of Possession for cause?
- Are the landlords entitled to a Monetary Order to recover unpaid rent?
- Are the landlords permitted to keep all or part of the security and pet deposit?

Background and Evidence

The parties agreed that this month to month tenancy started on August 29, 2014. Rent for this unit is \$1,050.00 per month due on the 1st of each month. The tenants paid a security deposit of \$525.00 on August 29, 2014 and a pet deposit of \$200.00 on August 25, 2014.

The landlords testified that the tenants failed to pay all the rent for March, 2016 leaving an unpaid balance of \$262.50. The landlords testified that the tenants agreed to vacate the rental unit in April, 2016 and the landlords agreed that if the tenants did vacate in April then they could have April as a rent free month. As the tenants did not vacate the landlords now seek to recover unpaid rent for April of \$1,050.00. The tenants failed to pay rent for May, 2016 and on May 16, 2016 the landlords served the tenants with a 10 Day Notice to End Tenancy for unpaid rent (the Notice). This Notice included the unpaid rent for March and May, 2016 to an amount of \$1,312.50. The Notice was served by registered mail. Proof of service has been provided in documentary evidence. The Notice informed the tenants that they had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on May 12, 2015.

The landlords testified that since the Notice was served the tenants also failed to pay rent for June, 2016 and have continued to reside in the rental unit. The total amount of outstanding rent for four months is now \$3,412.50.

The landlords have applied to retain the tenant's security and pet deposits of \$725.00 in partial payment of the rent arrears and seek a Monetary Order for the balance. The landlords have also applied for an Order of Possession to take effect on June 30, 2016.

The landlords testified that the tenants were also served with a One Month Notice to End Tenancy for cause. This Notice was served in person on March 20, 2016. The Notice has an effective date of April 30, 2016 and gave the following reasons to end the tenancy:

- 1) *The tenant has been repeatedly late paying rent.*

The landlords testified that the tenants and the landlords' agent had a temporary agreement that the tenants could pay rent every two weeks to help them out but this was not to be an ongoing arrangement. Even so the tenants have been late with their rent in November, 2015; this was paid on December 01, 2015 and late in January, February, March, April, May and June, 2016.

The tenants agreed that they owe rent for March, 2016 of \$262.50. The tenants disputed that they owe rent for April as the landlord said they did not have to pay April's rent if they moved out at the end of April. The tenants agreed that they have continued to reside in the rental unit and did not vacate at the end of April. The tenants agreed that they have not paid rent for May or June, 2016.

The tenants do not dispute the landlords' application to keep the security and pet deposits and testified that they had asked the landlord to do this against the outstanding rent but the landlords were not permitted to do so.

The tenants testified that they intend to vacate the rental unit at the end of June and are aware the landlords are entitled to an Order of Possession.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's application concerning unpaid rent and an Order of Possession for unpaid rent; I refer the parties to s. 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied from the undisputed evidence before me that there is outstanding rent for March of \$262.50. I find the landlords are entitled to recover unpaid rent for April, 2016 of

\$1,050.00. The parties had a verbal agreement that the rent for April would not have to be paid if the tenants vacated the rental unit at the end of April; however, as the tenants did not comply with this agreement the landlords are entitled to recover the rent for April, 2016. I further find the landlords are entitled to recover unpaid rent for May of \$1,050.00 and June of \$1,050.00. The total amount of unpaid rent is \$3,412.50.

I Order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenants' security and pet deposits of **\$725.00** in partial payment of the rent arrears. There is no accrued interest on the deposits for the term of the tenancy.

As the landlords have been successful in this matter, the landlords are also entitled to recover the **\$100.00** filing fee for this proceeding.

The landlords will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent	\$3,412.50
Filing fee	\$100.00
Less security and pet deposits	(-\$725.00)
Total amount due to the landlords	\$2,787.50

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Notice is deemed to have been served on May 21, 2016, five days after it was sent by registered mail, pursuant to s. 90(a) of the *Act*. The tenants did not dispute that they failed to pay the outstanding rent within five days and the tenants did not apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that 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.

As this date has since passed I grant the landlords an Order of Possession as requested for June 30, 2016, pursuant to s. 55 of the *Act*.

As I have granted an Order of Possession based on the 10 Day Notice to End Tenancy for unpaid rent I am not required to deal with the landlord's claim for an Order of Possession for cause.

Conclusion

The landlord is provided with a formal copy of an Order of Possession. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$2,787.50**. This Order must be served on the tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the tenants fail to comply with the Order.

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: June 13, 2016

Residential Tenancy Branch